# CAPTURE AT SEA

BY

EARL LOREBURN

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# PREFACE

THE substance of the following chapters was published in the form of letters to the *Manchester Guardian* and other newspapers early in this year. In reprinting them it is not my purpose to enter upon any question of naval expenditure. Whether the great sums which we now spend upon naval armaments are excessive or insufficient, it must be the desire of all sensible men that the laws affecting maritime warfare shall not unnecessarily hamper commerce and shall not add to the difficulties of maintaining neutrality. My endeavour has been to show that commerce must necessarily suffer greatly in time of war under the present confusion and unreasonableness of

the law, and that the dangers to commerce will neither prevent wars nor bring them to an end. On the contrary, they will only tend to extend the area of future wars by provoking nations which desire to be neutral. In order to arrive at a sound conclusion upon this subject it is necessary to regard it as a whole. If it is so regarded I am convinced that the changes which I advocate will be found advantageous to ourselves as well as to other nations.

L.

*April*, 1913.

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# CAPTURE AT SEA

## CHAPTER I

### LAWS OF THE SEA

DURING the last few years there have been repeated alarms of war, happily without actual hostilities so far as this country is concerned. And, though other nations have been embroiled, their conflicts have been mainly on land or at a great distance from our shores. The mercantile community have begun to realize how serious their position, and that of the public who live largely by their industry, might be if we were engaged in

war with any considerable naval Power, or even if we remained neutral in some great naval war between other nations. For the laws of the sea are antiquated and in many respects wholly unreasonable, so that both neutrals and belligerents must suffer from them. Their uncertainty and the dangers that lurk in them were exemplified but not removed at the two important conferences of 1907 and 1909. Those conferences have thrown a flood of light upon the whole subject, and ought to be the beginning of a new era in the laws and customs of war at sea.

The high seas are a highway for all nations. Unfortunately, they are also a place in which nations must insist upon fighting. The right to trade and the right to fight come into conflict. It is at all times difficult to reconcile them, and, when the issue is which shall give way, those who have the more constant and intimate

access to ministerial councils are apt in all countries to prevail. I want the public to realize the ruinous consequences which may result from the present confusion and unfairness of maritime law and to supply the necessary weight without which reform cannot be carried.

It has been customary in the protracted controversies upon this subject to dwell upon the lessons of past history. History is often useful to guide our judgment in the problems of to-day, but unless the conditions remain approximately the same it may prove a treacherous guide. Naval conditions in their relation to commerce are utterly changed since the time of Napoleon or Chatham. Sailing ships have given place to steam. Railways have revolutionized land carriage. Modern artillery, torpedoes, submarines, mines, and wireless telegraphy have revolutionized warfare at sea. International law as

to the rights of neutral trade has been profoundly affected by the Declaration of Paris in 1856. And the astonishing developments in trade, finance, and mechanical invention have caused commerce to assume proportions undreamed of a hundred years ago. During this long period of a century every great nation has been engaged in at least one military struggle, and the rules which apply to fighting on land have been revised in the light of experience. There has been but little corresponding experience in naval warfare, and, particularly, no naval war in which commerce has been for long interrupted. Great soldiers tell us that the principles of strategy are immutable from the days of Hannibal onwards. No doubt we must bow to their authority, but we may presume to judge for ourselves upon points of State policy or upon the needs of trade and its risks and the paramount

necessity of saving it from danger. We must study things, not as they were but as they are now.

In the latest number of the Statistical Abstract for the British Empire I find that the total foreign trade and total inter-Imperial trade of the Empire taken together are valued for 1910 at the sum of 1,776 million pounds sterling. Almost the whole of this vast mass of merchandise is, and from the nature of the case must be, conveyed wholly by sea. In the same publication may be seen the net tonnage of sailing and steam ships on the register in the British Empire for the same year. It amounted to nearly $13\frac{1}{2}$ million tons. All these ships are, of course, constantly at sea with the cargoes they contain.

Figures, I know, are apt to be insipid and argument may easily be lost in arithmetic. But the volume and, even more, the cosmopolitan character of trade in

modern times must be closely appreciated in order rightly to conceive the new problems before us. So let me be excused for giving a very little more detail.

Early in the nineteenth century Great Britain imported about 22 lb. of wheat and flour every year for each unit of her population. At the end of the nineteenth century she imported about 270 lb. for each unit. And it has increased since then. When the war broke out with France in 1803 Great Britain had about 2 million tons of shipping and a foreign trade amounting to 71 millions, so far as we know, to protect. To-day, as we have seen, the shipping is upwards of 13 million tons, and the foreign trade, including inter-Imperial trade, has grown from 71 millions to 1,776 millions of pounds sterling.

Equally important is it to observe the ubiquity of our merchant ships, which frequent every sea, and the complex ties

which unite all nations in the republic of commerce. In 1910 the net tonnage of vessels entered and cleared in ports of the British Empire from and to foreign countries was in all 218 million tons of all nationalities. They come and go from every corner of the ocean and thence their cargoes penetrate to every land. At each end of every voyage they supply the material for industry or distribute its proceeds, not by separate or isolated exchanges but in a continuous current of transactions, often one dependent upon others, so that whatever frustrates one class of dealing or impoverishes one nation will thereby indirectly disturb and impoverish some others also. I cannot pursue this point farther here.

The international character of trade is well brought out by the modern system of insurance. This class of business was first developed in Great Britain, and

British insurance companies have maintained the lead. They do an enormous business, their shareholders are all over the world, and many of them have agencies in most of the great cities of Europe and America. All ships are practically certain to be insured against war risks in time of war; and many insurance companies are in the habit of reinsuring against a proportion of their losses in foreign countries. One consequence of this practice is that a great deal of the loss caused by capture and destruction of merchant ships in time of war will be borne by neutral insurers. The owner of the captured vessel will very likely make a good thing of it, for the values insured are usually high. But the neutral underwriter may bear the loss. When our ships are bombarding or blockading some place or making prize of some trading ship, they cannot in the least know whom

they are injuring. The property affected is quite likely to be insured or reinsured by some British underwriters. When San Francisco was burned by an earthquake 21 millions' worth of property was destroyed, of which 10 millions were insured in American, 7 in British, and 4 in German insurance companies. It might have been done by a British or German bombardment.

The case of insurance is too curious to part with at once. Long ago, in the first Lord Mansfield's time, British underwriters used to insure enemy ships and cargoes, the result of which was that when British cruisers captured French merchantmen, as Valin observes, "one part of that nation restored to us by the effect of insurance what the other took from us by the rights of war." And when the insurer tried to escape payment by pleading that it was illegal to insure an enemy's

ship Lord Mansfield never allowed such a defence to prevail, if he could help it. He could hardly be persuaded to express an opinion of the lawfulness, but always maintained the expediency of keeping this insurance business, and predicted that if it were prohibited we should be the losers. Quite recently, in 1905, the same kind of difficulty arose again. There is a very large business done in Germany by British companies, and an animated controversy arose in that country as to the validity of such insurance policies in the event of war between Germany and Great Britain. I believe that negotiations ensued and an agreement was arrived at by which the British companies undertook not to raise any defence of illegality and to deposit in Germany securities of a sufficient amount to cover their liability. These are illustrations of the countless threads by which nations are interlaced.

A manufacturer in one country buys his materials from five or six other countries and sells his products to six or eight more, and whatever hinders his manufacture is thus felt by others and again others in an ever-widening circle. This was so even during the old wars, but in a degree not comparable to what can be observed to-day.

Certainly, it requires some imagination to realize what would be the effect upon the sensitive world-wide organization of modern commerce if the brutal methods of Napoleonic times were renewed, when the French interdicted all traffic with Great Britain and Great Britain retaliated by interdicting much of the traffic of the Continent.

Privateering is now formally abolished. Enemy property is now safe in neutral ships unless it is contraband. These are great changes, and have been accom-

panied in practice by other changes, all of them, be it noted, in face of strenuous opposition by the naval experts of the day. But a great deal more remains to be done. Public opinion is beginning to recognize, here as elsewhere, that war against industry is unjustifiable, and that it recoils against those who wage it and injures neutral unoffending nations as well as, and sometimes even more than, the enemy. The practices which are directed against shipping on the high seas are the chief, if not the only, instrument by which such a war is waged.

People are also, I hope, beginning to see that these practices, while producing distress among great numbers of innocent persons, are futile, or almost always futile, either to prevent or to shorten war. But in the endless feud between the rights of belligerents and the rights of trade, the former are constantly endeavouring to

frustrate by new devices the concessions which have been wrung from them, so that the old grievances tend to reappear under some fresh pretension.

I propose to examine the present state of international law in regard to the four principal methods by which commerce at sea is liable to be oppressed in time of war.

In the first place, all the ships and all the merchandise therein belonging to private citizens of the belligerent State may be captured and confiscated by the enemy. In a land war between civilized forces the private property of enemy individuals is respected, except that the army of occupation may requisition (and must pay for) what is needed to supply its wants on the responsibility of the officers in command. At sea private property, whether needed or not for the naval forces, can be and often is confiscated,

in some countries for the benefit of the State, but in ours and in some others for the profits of the officers and crew of the vessel which effects the capture.

In the second place, one belligerent State may establish a blockade of any ports or coasts of another belligerent State, and intercept all trade whatsoever with such ports or coasts.

In the third place, belligerent States claim and exercise the right in many cases of confiscating the private ships of any nationality which are found carrying contraband to the enemy or assisting him in the war.

And, finally, belligerent States claim the right to strew the high seas with automatic contact mines, anchored or unanchored, with hardly any practical limitation.

All these practices, in one form or another, are defended under the sanction of international law, if indeed that is a

proper appellation for a mass of customs, precedents, and conventions, a great part of which are by no means uniform and some of which are the subject of vehement dispute. And this is one great difficulty. There is no Parliament of nations in which a predominant opinion may be imposed upon the minority. The consent of practically all the Powers, or at least all the Great Powers, must be obtained before any new rule can become imperative. Each Power has its own views of what will best serve its own interests, and often seeks to keep whatever custom or interpretation will serve its purpose, while willing to abandon what it regards as useful only for others. Others accordingly refuse one-sided reform. It is useless to rail against this attitude as though it were the outcome of some national perversity. The rulers of every great nation will always look, and are bound to look, primarily

at the interest of those whom they govern, and there is nothing to be ashamed of in avowing and acting upon that duty. If we desire to make things better, we must convince them that their true interest lies in accepting the required changes and in making concessions upon some points in order to obtain concessions upon others. And we must begin at home, for Great Britain has been in the past a resolute adversary of some necessary and vital reforms.

One more word of preface. Those who are opposed to some of the changes which I should regard as improvements say, sometimes with a sneer, that these changes are advocated on grounds of Christianity and humanity. I respect all who take that ground, but have no title to urge such considerations on other men. My contention is that change is required in the interest of Great Britain, and of other

nations as well, from the point of view of trade and national security. It may be a lower ground, but I confine myself to it.

## CHAPTER II

### ENEMY CAPTURE

INTERNATIONAL law to-day allows a belligerent State in time of war to capture and confiscate the merchant ships belonging to private citizens of its enemy State and whatever enemy merchandise they may contain, but not neutral ships or any merchandise they may contain unless there be some offence against neutrality..

This practice has the sanction of long usage in the past. It originated in the theory that when nations are at war all their subjects are mutual enemies and a species of private war can legitimately be

waged between them. On land the theory was gradually discountenanced, though its traces remained for a long time. At sea it survived much longer in the shape of privateering, a custom under which adventurers were licensed by the belligerent State to prey upon the commerce of its enemy. At last privateering was abolished by the Declaration of Paris in 1856, which almost all the Powers have accepted. Vessels of war are still allowed to pursue this practice.

There has been, however, for at least 150 years a steady opposition to the maintenance of this anomaly. The Abbé de Mably, a considerable writer on Public Law, was the first conspicuous critic. He wrote about the year 1750, and was denounced as a visionary, sharing therein the common fate of men who are in advance of their time. Frederick the Great, Franklin, Brougham, John Stuart

Mill (after the Declaration of Paris), Cobden, and Sir Henry Maine are among the names that should be honoured when this law is altered. A good many States, too, have urged or incorporated in their treaties a more sensible rule. Notably the United States of America have pressed this subject upon the attention of other Powers in season and out of season ever since they became an independent nation. Great Britain has been continuously the principal supporter of the right of enemy capture, and, indeed, but for her persistence it would probably have been abolished long ago. Yet many of our leading men have perceived the error without being able to give effect to their views. A recent example is the late Lord Salisbury, who, when Prime Minister, told Lord Avebury that he was in favour of immunity.

It would be out of place here to dwell

more upon the history of this controversy or to canvass the conflicting opinions of prominent men. What has to be considered is the effect of this law and the propriety of changing it so that in time of war unoffending ships and innocent cargoes shall be unmolested though they belong to enemy citizens. We can regard it, to begin with, from the point of view of British interests, and need not in the least hesitate to make clear how those interests would be served by the assurance of immunity to commerce, because it is perfectly certain that our needs and our points of weakness as well as our points of advantage are thoroughly understood in foreign countries.

People in this country are apt to regard the danger of a naval war in rather an incomplete way. Their apprehensions are generally directed towards invasion, and for this reason we pile up armaments and

think that when we have a great predominance of fighting ships we may sleep comfortably at night. There are other dangers less remote than invasion. We are not only the greatest naval Power, but also incomparably the greatest maritime State, using the sea far more than any other nation in the world. As already stated, the net tonnage of the mercantile marine of the British Empire was in 1910 nearly 13½ million tons, of which the United Kingdom itself had upwards of 11½ millions. Germany came next with a little under 3 millions, France with about 1½ millions, Japan with only a little more than France, and the other Great Powers with less, except the United States. The position of the last-named Power is peculiar, with its great fishing and coasting and lake industries, but its shipping for foreign trade did not in 1910 exceed 800,000

gross tons. So we are infinitely the greatest carrying nation on the sea, and reap enormous carrying profits. If we were at war, and our merchant ships liable to capture by our enemy, it requires no special wisdom to perceive that neutral merchants would prefer to place their goods for carriage in some neutral ship which was free and safe rather than in a British ship liable to capture. For though their neutral merchandise would be released if seized in our vessels, yet it would be released at a strange port, where there might be no market, after inevitable delay and without compensation. If the goods were perishable, the loss might be total. British merchants also would prefer to load their goods in a neutral ship, for they would thus secure complete immunity under the Declaration of Paris. They would not, however, be able to take full advantage of this protection, for the simple

reason that there are not enough neutral merchant ships in the world to take over the carriage of our oversea trade in addition to their own. We own about one-half of the sea-going shipping of the world.

These considerations take us direct to the very heart of this controversy in one of its gravest aspects. What are merchants and shipowners to do if we are engaged in naval war with a powerful enemy? And what are we to do as a nation? By the latest returns it appears that our imports and exports for the United Kingdom alone now exceed in value 1,300 million pounds sterling. The imports include by far the greatest part of the food on which we live and of the materials for our industries. The exports consist of the products upon which our industry is exerted. Wages, and life itself, depend on the bringing

into the United Kingdom of these imports and the sending out of these exports. In the old times it was regarded by statesmen as an axiom that this country ought to raise upon British soil the greatest part of our food. For that reason, and not primarily from any economic theory, they were Protectionists. It was the fear of wanting food. Since that time the enormous growth of population has made us dependent upon sea-borne imports. We have had no wars placing our commerce in jeopardy for a hundred years. We have forgotten the risks which to our fathers were familiar. We have multiplied by many fold the needs which must be satisfied from abroad. We cannot possibly, even if we wished it, recur to the crude methods of Protection, and, if we did, they would not supply us with materials for our industries or secure us against hunger. And yet seamen and

diplomatists implore us to adhere to a law which exposes our merchant ships for thousands of miles along innumerable ocean highways while carrying what is to us a matter of life or death. If policy is to be intelligent, it must take full account of the notorious fact that stoppage in this circulation means for us a grave calamity.

I recur to the question, What would our merchants and shipowners do if there were a great naval war? It may be that our merchant ships would not be sold to neutrals, as some apprehend, on any large scale. Their number and value are enormous. And it is by no means certain that all States would recognize the validity of such sales or acknowledge the transferred ships as entitled to the rights of neutrality. There is a chapter in the Declaration of London which treats as invalid the transfer of an enemy vessel to a neutral flag if

made " in order to evade the consequences to which an enemy vessel, as such, is exposed." If this means that the sale of a ship is void when the owner sells because he is afraid it may be captured, it would go far to prevent sale altogether during war. The meaning need not be scrutinized, for the Declaration has not been ratified. But it is certain that it will be very difficult and dangerous to make a merely nominal transfer so as to pass the property in the ship while retaining the control or profit or right to resume ownership. Either the mercantile fleet must be transferred out and out to some neutral owners, which involves also the transfer of our carrying trade, or it must still fly the British flag and take the risks of war.

Shipowners might take this latter course. Freights would rise because premiums against war risks must be

added to them, and of course the cargoes must be insured as well, and the cost of it all would fall upon the consumer. We are expected to hope, rather than to believe, that this loss will be quite inconsiderable, because our Fleet is so predominant that after a short time it will destroy all the enemy's fleet or shut it up in port. It is a very comfortable view, but can be entertained only by those who ignore or are unacquainted with the intentions and opinions of foreign Powers in regard to the conversion of merchant ships into warships, as disclosed at the two Conferences of 1907 and 1909.

In old days the capture of merchant ships was undertaken by two classes of armed vessel, the regular navy and privateers. Since 1856 we are no longer exposed to the depredations of individual adventurers, sailing with letters of marque or licences, but without the

security given by the presence of a commissioned naval officer in command and the external marks which distinguish warships. This security is now required, and it counts for a good deal in preventing the recurrence of a system which was apt to degenerate into something very like piracy. But it would be a great mistake to suppose that in future the regular navy of a belligerent State will alone be able to prey upon commerce. A new species of ships of prey has arisen. In 1870, sixteen years after the Declaration of Paris, the Prussian Government offered to respect private trading ships in the Franco-German War; but, as France refused reciprocity, it addressed an appeal to German sailors and shipowners, inviting them to place their services and resources at the disposal of their country, as a volunteer fleet, under naval discipline. This example has been followed by other

Powers. Russia established a volunteer fleet, to consist of fast vessels, acting as merchantmen in time of peace but to become warships in time of war. France subsidizes mailboats, constructed on plans sanctioned by the French Admiralty, which are to be incorporated in the navy when war breaks out. Great Britain has agreements with several great navigation steamship companies, such as the Cunard, under which the Government can buy fast liners at fixed prices and on short notice, and new ships are to be built on plans approved by our Admiralty. Similar steps have been taken by the United States. Similar steps may be taken by all.

An incident occurred in 1904 during the Russo-Japanese War which illustrates the use which may be made of this new departure. Two vessels, the *Peterburg* and *Smolensk*, belonging to the Russian

volunteer fleet, left the Black Sea in July, and passed the Bosphorus and Dardanelles flying the flag of the Russian mercantile marine. These straits are closed to warships under various treaties. They passed the Suez Canal under the same flag. When they had reached the Red Sea they hoisted the flag of the Russian navy, and the *Peterburg* captured the *Malacca*, a P. and O. mailboat, on the charge of carrying contraband, and either seized or threatened other neutral ships. Under great pressure from the British Government the *Peterburg* and *Smolensk* hauled down the Russian naval flag and restored the captured ships. They had evaded the treaties by passing the Dardanelles, and on this ground alone their action might be condemned as unlawful. But the larger question was raised by these occurrences, and led to most significant exchanges of opinion at the two Conferences in 1907 and 1909.

The representatives of the leading foreign States asserted unequivocally their right to make use of trading ships for purposes of war as an inalienable attribute of sovereignty, while admitting that such ships must fly the naval flag and be under naval discipline. Lord Desart, the first British delegate at the Naval Conference, pointed out the real danger to be guarded against. Neutral merchant ships might sail in company with or be in port alongside of a vessel belonging to the volunteer fleet of a belligerent without any suspicion of her true character. She might spy upon their actions in the innocent guise of a trading vessel till the convenient moment came for hoisting the naval flag and declaring herself a vessel of war. Such a vessel, under the merchant flag, might frequent a neutral port and there receive supplies without limit, or stay for any period (privi-

leges to which warships are not entitled), and then follow merchant ships out to sea and change her flag on the high seas so as to capture the unsuspecting traders. Possibly she might haul down the naval flag and resume her commercial character so as to take refuge in a neutral port when danger appeared. All this was put to show how neutral commerce, if suspected of contraband, might be harassed by converted merchantmen. Exactly the same thing is true of belligerent commerce which is liable to capture whether contraband or not.

The British delegates endeavoured to obtain some restrictions upon the right of converting merchant ships into warships on the high seas or some guarantee against the abuses to which such conversion appears obviously liable. They wholly failed to persuade or convince the delegates of other Great Powers, and, to

use Lord Desart's language, " we were met with a refusal to make any concessions or to abate one jot from the claim to the absolutely unfettered exercise of the right, which its advocates vindicate as a rule forming part of the existing law of nations." It is equally serious to find that there was not absolute unanimity in recognizing the unlawfulness of effecting the conversion in neutral waters.

We shall do well to realize what this means to our mercantile marine. It affects us as neutrals in relation to the law of contraband, but I pass that by for the moment. My immediate purpose is to make clear how it affects us if we are at war. Our enemy would suddenly convert into warships, placing them under naval discipline, any merchant ships, fast or slow, large or small, that he pleased, and let them loose on our commerce. He might buy scores of suitable ships for

his purpose from any neutral owner, or even from British owners, without the State or the private seller knowing anything of the purpose for which they are bought. It could easily be managed through intermediaries. Having got them, the enemy might have them transferred on the high seas if not in neutral waters, and still treat them as merchant ships entitled to neutral hospitality till the moment came for hoisting the flag.

I say that the enemy might do all these things, and will do them if he can, notwithstanding our protest against the lawfulness of such proceedings. The point is that in the Conferences no explicit agreement was arrived at to prohibit most of these things being done. Even the right of reconversion was left unrestricted, while the right to convert on the high seas, together with the right to acquire for conversion any private ships of neutral

individuals, at least if the neutral State is kept ignorant of it, were treated throughout as legitimate, and will certainly take effect if we are at war. Those are the points which chiefly concern us. It has been said that depredations by such vessels will be impracticable on any very extensive scale, because they will be unable to procure fresh supplies of coal, ammunition, or provisions except at their own ports, and no country except our own has ports all over the world. I am afraid this is not a very reliable answer, because even if neutral States were to refuse supplies to vessels of this kind the loading of coal and other stores at sea, at prearranged times and places, offers no insurmountable difficulties, and if the converted cruiser is of five or six thousand tons (a very moderate size for modern liners) she could easily carry a few light guns, with ample supplies for a long cruise.

Unsatisfactory though the result of these conferences was in this and many other aspects, yet they serve to show us conclusively what kind of warfare we must expect in any conflict at sea. We are not to take comfort in the thought that our Navy can triumph over every foe. We should still have to reckon with a war against commerce which could be carried on by any ship armed with only a few small guns, not differing, unless it may be in speed, from scores and scores of trading ships which are to be bought at a price, and might in complete innocence be sold at a price, out of our own mercantile marine even when we were ourselves at war.

In what degree can we rely upon protection, so far as human foresight can guide us, even if we maintain our present preponderance at sea and in addition ourselves equip a number of fast merchant

ships? Manifestly an absolute answer to such a question cannot be given, for it must depend in part upon who is the enemy and what is his strength. His strength for this purpose is not to be measured by his navy, but by the number he may be able to acquire and equip of commerce destroyers, which is a question of money and organization. Only do not let us rest under the delusion that there will be a great battle and a glorious victory and after that the enemy's flag will disappear from the seas. We have had fair warning that in the opinion of other nations it is lawful to convert merchant ships into warships on the high seas, and, some say, even to reconvert them and to repeat the operation as you please, and there is no duty upon any neutral State to prevent ships of its mercantile marine from being sold while the war is in progress, provided they are not armed within

its jurisdiction, nor is there any means of preventing the sale or even knowing of it if it is arranged between private intermediaries. The danger to our commerce from such possibilities speaks for itself. What they might cost us in additional freights and additional premiums and in loss of ships and consequent shortage of provisions and other merchandise, and how all this might raise prices, I do not pretend to say. No one can foretell.

Now, those who hold that we ought to insist upon retaining the present law of enemy capture do not dispute that we should suffer by its operation, though they differ as to the extent of this danger, but they say that our loss would be much less than that of our enemies, and that we could so use this weapon as to compel our enemies to sue for peace. This is very important. If it is true, it constitutes a formidable argument against

change. If it is true, then it must follow that the right of capture will operate as in some degree a deterrent from war. All the losses and inconveniences that attend a state of war must in some degree inevitably operate as a deterrent, and this among the number. But if this is so potent a weapon that it will in our hands tell on the balance so much in our favour as to reduce our enemies to submission, then, indeed, other nations will have strong reasons not to provoke us. It is necessary, therefore, to look at the argument with reference to each of the Great Powers in turn. And in order that we may realize its full strength let it be supposed that everything goes most favourably for us and that our Fleet has established its superiority in the imaginary war, that their fleet cannot face us in battle on the high seas, and that in each case they are

fighting us single-handed with no ally. So far as can be foreseen, would the exercise of the right of enemy capture bring upon our enemy a pressure so severe that it would be decisive in our favour? First glance at this question separately as to each Great Power, and then regard the possibility of a combination against us. I have not the least idea how the Admiralty propose to deal with this subject, or what their plans may be, beyond the information which is public property. There are, however, salient facts and probabilities of which every man can judge for himself. And I maintain that it is a subject upon which no amount of expert opinion can overbear the obvious conclusions of common sense.

## CHAPTER III

### ENEMY CAPTURE—(*continued*)

THE question now before us is how far our retention of the right of enemy capture would deter any Great Power from commencing a war against us or would curtail its duration if it were commenced. And I trust that in imagining such a contingency I may not be suspected of thinking it probable. God forbid! I put it merely for the purposes of argument.

Germany is the strongest naval Power on the Continent, so let me imagine a war with Germany. We are warned that war comes swiftly and stealthily now. Its out-

break would find a good many German ships in British ports or on the high seas; also, be it remembered, a good many British ships in German ports. Possibly sufficient notice would be given or days of grace allowed on both sides, and no ships would be captured in this way. If not, then many would be seized. It is a game that two can play at. No one can be certain which nation would suffer most from surprise seizures, but the number of British ships in or within reach of German waters might exceed the number of German ships in British waters or on the high seas. In any case, surprise seizures would be all over within a fortnight, and we should settle down to normal warfare. It would be "catch what you can."

Obviously we should not catch very much, because German merchant ships would remain in port out of our reach.

But in the Baltic it does not seem likely that we should attempt to maintain the command. The Kiel Canal enables Germany to concentrate either in that or in the North Sea all except the largest ships of war, and the canal will be deepened before long to admit even the largest. It would be impracticable to detach for the Baltic, with its narrow entrance and confined waters, an isolated squadron in face of an enemy with a very powerful fleet able to concentrate by the canal. If our detached squadron were strong enough to encounter with safety the entire German fleet, our force remaining in the North Sea might be dangerously weakened. But though German ships would be unmolested in the Baltic, they would be probably excluded from the North Sea, except perhaps some coasting trade, and it is pretty certain that they would not venture a trading voyage in

any open sea. For Great Britain lies like a huge breakwater between them and the rest of the world.

On the other hand, how would it fare with the British mercantile marine? We should be excluded from the Baltic, and in such a war we could by no means count upon smooth conditions in the North Sea. The North Sea is often very foggy. Raids upon our merchant ships, or for that matter upon our warships, by small swift flotillas in night-time or foggy weather would not be impracticable by a daring enemy, and a few such incidents would be followed by a quite disproportionate alarm. Nor is it certain that our merchant ships in the Atlantic and Pacific, or indeed in any distant waters, would be unmolested. A few fast converted cruisers of the "volunteer fleet" type might slip away. Or such vessels might be engaged in commercial voyages far from Europe

when war broke out. Or suitable vessels might be bought during the war as merchant ships and then converted on the high seas into cruisers. Attacks upon our ocean commerce are by no means impossible and not improbable during the earlier months of the war or even throughout it. Our commerce is on every sea. We offer a much larger target than does Germany because we have a much larger shipping.

All this might be endured, and more also, if we on our side could by capture or the fear of it either prevent or shorten the duration of an Anglo-German war. Could we? The net tonnage of the German mercantile marine was in 1910 nearly 3 millions. German ships, if not sold, would for the most part be confined to port. But this would not prevent Germany obtaining all the seaborne supplies she required or exporting by sea all

that she wished, to and from her own or foreign ports, except contraband. Neutral ships could do all this for her in security if enough of them could be found, for free ships make free goods under the Declaration of Paris. She would lose by dread of the law of enemy capture the profits made by her merchant marine. She would have on her hands unemployed seamen and others in dependent trades. And she would have to pay a higher freight to neutral ships than she would pay to her own. This would mean poverty and unemployment, but within a limited circle.

The question must arise whether neutral shipping would suffice to convey the merchandise which Germany needs in order to maintain her industries. Now, the British Empire has to provide for over 1,770 million pounds sterling in value being carried oversea each year. I

am not aware that any authoritative statement has been published in regard to the oversea trade of Germany. Our Statistical Abstract for Foreign Countries gives the totals of her trade with the principal countries of the world, and I have calculated from a study of those figures that excluding the Baltic trade she needs less than 400 million pounds sterling in value of merchandise, exports, and imports to be carried each year oversea, all of which, of course, if carried in her own ships, would be liable to capture in time of war. Accordingly the demand from Germany for neutral ships would be less than a quarter of what we should have to make if all our mercantile marine were laid up in port. Still, it would be a large demand, though neutral commerce might be able to meet it. But she would also have another resource. Even were we at war with Germany, there would be nothing

to prevent British merchant ships from carrying goods to and from such neutral ports as Antwerp or Rotterdam, and however certain we might feel that they would find their way to and from Germany, no one could prove it of any particular cargo, and even if it could be proved there is no law to prevent in time of war the carriage of goods between neutral ports merely because the neutral merchant means to make them the subject of traffic with our enemy. As in the Napoleonic wars we made and carried the shoes required for the French army, so in a German war their trade might be carried by British ships to neutral ports.

A different weapon of naval warfare would in a different way inflict more severe damage upon Germany. If the British fleet were able to blockade the German ports, then Germany would be deprived of all sea-borne traffic into or

out of the blockaded area. No ships could then enter or quit any ports within that area. I shall revert to this subject, but am content for the moment to point out that the law of capture is one thing and the law of blockade quite another thing, and that it is wholly unwarrantable to justify the former by attributing to it an efficacy in putting pressure upon an enemy which belongs exclusively to the latter, whether it be much or little.

It is, however, a very legitimate observation that you must take the two weapons together and estimate their effect cumulatively. Enemy capture would drive the German mercantile marine off the high seas, but would leave the German ports accessible to neutral merchant ships. Blockade would go farther, and seal up the German ports to neutrals also. But it would not seal up Antwerp or Rotterdam or any other neutral ports, and

German exports and imports could still reach Germany and leave Germany by those avenues. I do not presume to express an opinion upon what is chiefly a naval question—whether we could blockade all the German ports, or indeed any of them. Assuming that we could do so, we should certainly inflict a good deal of damage on their commerce in reducing their North Sea ports to idleness and constraining them to pay land carriage from their frontier to the neutral ports. It would be not only extra freights but also extra land carriage. But, as much of their merchandise already goes by Dutch and Belgian ports, the extra land carriage would not be on anything like 400 millions. Upon the whole it seems most probable that we could inflict heavy pecuniary sacrifices on Germany, increased freights if there were no blockade and also increased railway charges if there

were a blockade, upon a great mass of merchandise, and greatly dislocate her industry. But to say that we could in this way bring to ruin or force to submission a great and wealthy and high-spirited nation, with a population of 65 millions and a frontier marching with seven other States, from or through which she could obtain whatever merchandise she might require, seems to me, I confess, quite an extravagant proposition.

I come now to France, and will suppose an Anglo-French war. It is unnecessary to go again over the ground already traversed or to repeat the points of view. France would undoubtedly suffer from the law of capture. Her mercantile marine is of a total tonnage of about 1½ million. All these ships would be laid up or sold except for a little coasting trade. Her seamen would be largely unemployed, and she would pay extra freight to neutral

ships for the carriage of her sea-borne commerce. Indeed, France would suffer very much in the same way as Germany; certainly not more, and probably a good deal less upon the whole, for the French oversea trade is less and the mercantile marine less numerous and less valuable. On the other hand, British shipping and commerce might suffer severely in an Anglo-French war. France lies upon the flank of our trade routes to almost every quarter of the world. In the Mediterranean, through which so much of our commerce passes, she has Toulon and Biserta. It would be a hard task to bottle up the great coast-line of France on the Channel and the Atlantic so that no commerce destroyers could get through. And converted merchantmen would abound. In short, we might do a good deal of injury to France by this weapon and she might do a good deal

in return, but the whole would be a minor matter in contrast with the other costs and losses of war, and would have no effect in forcing her on her knees. France could be easily supplied by neutral shipping or overland. She has excellent railway communications with five Continental States.

When we come to the United States of America considerations of the utmost gravity present themselves. America has always protested against this law of capture and refused to abandon privateering unless it were abolished. Accordingly, in the event of a naval war, America is free to issue letters of marque to privateers. But even if she acted upon the Declaration of Paris, British commerce would be exposed to risks which it is quite absurd to gloss over. Every one realizes what they are, and they cannot be diminished by pretending not to see

them. The United States have an immense seaboard both on the Atlantic and on the Pacific, with plenty of harbours and unlimited resources. It is a question of months when the Panama Canal will be opened and the American fleet able to pass from one ocean to the other in a few hours. Nothing can be more certain than that, if such a war came, all British shipping within very long reach of the American coast would be in great danger either from American privateers or commissioned merchant ships armed for the purpose. Not a few ships suitable for such work already fly the American flag. Plenty would soon be added. I believe British ships would very largely cease to navigate those waters because the war premium would make the business unprofitable. In return we might be able to drive American vessels from European waters and make it very dangerous for

them to sail in the Indian Ocean or to China seas or the Southern Pacific, and, indeed, risky almost all over the world. But American shipping does not very much frequent the high seas. There would be an immense loss of property in this country, greatly increased prices, and much unemployment at home, together with most serious damage to our carrying trade. America has very little foreign carrying business and unlimited supplies at home. Our position is exactly the reverse. Let any man of business calculate for himself how this instrument of capture would help us to bring such a war to a conclusion.

Let us now imagine an Anglo-Japanese war. It would produce results the same in kind though different in degree as in the case of a war with the United States of America. Our commerce would be in danger in the Pacific east of Singapore

and north of New Guinea, perhaps over a still larger area. Japanese shipping would be excluded from Atlantic and European waters, and in peril in all other seas. The Japanese ocean trade is not large, and as a means of ending such a war this weapon would be of trifling value.

A few words as to the other Great Powers. In a war with Austria we could hardly hurt her much by this weapon. The net tonnage of her mercantile marine is only half a million. Nor could she much hurt us, unless she builds or acquires a fleet of infinitely greater strength. Russia has no great mercantile marine. It is mostly in the Baltic, and in the Black Sea, which is by treaty inaccessible to our warships. She could shut our ships out of the Black Sea and make it unsafe for us in the Baltic. The only remaining Great Power, Italy, has an excellent fleet, a great extent of coast in the Mediter-

ranean, with plenty of harbours, and might make it uncomfortable for our shipping in that sea, either for trading in it or traversing it. Her mercantile marine is not large, about a million net tonnage, and would probably be all shut up in port. She might be reduced to sending and receiving her sea-borne commerce by neutral ships, with the loss incidental to that change. The extent of that loss would not be great, because her mercantile marine is not great.

After going through the Great Powers one by one, what does it come to? Assuming that we are supreme at sea, the result seems to be that no single State could by the instrument of enemy capture inflict upon us, nor could we inflict upon any of them, any decisive injury. If other methods of warfare did not force them to terms this would not. No single State, I say, could by this weapon inflict

upon us a decisive injury. But what if a combination of several States were leagued against us? It is at this point that our quite peculiar and unique position has to be considered. We depend upon imports for our food and for the raw materials of our industry. We can get them only oversea. Our wants are absolutely vital. The quantities we need are enormous. As things are, neutral shipping could not supply us adequately unless they bought our ships. We should be obliged largely to rely on our own ships, all liable to capture under the existing law. It is not a question of blockade. I assume that the United Kingdom cannot be effectively blockaded. It is a question of enemy capture pure and simple. There are many who think that the only nation in the world against whom this weapon of warfare could be used with crushing effect, by a strong naval combination, is the United Kingdom.

In order to keep the argument clear I have treated it as though only the risks and wants of the United Kingdom were concerned in the event of a naval war. But we have also the Dominions and world-wide possessions of the British Crown to consider. They are all, or practically all, self-supporting in the matter of food, and none of them are at the same time so highly organized industrially and so dependent upon imports and exports as to be quickly ruined by some interruption in transport. But their trade oversea is considerable.

Their shipping was in 1910 a net tonnage of about $1\frac{3}{4}$ million. No doubt they would support us and endure the pressure of war with a spirit equal to our own. But they would look to us to make good our professions that we maintain our fleet and take their help in doing so, for their protection as well as for that of the

United Kingdom. If it came to a naval battle we could, I hope, give a good account of ourselves and prevent their being molested by a fleet. Also we might be able to protect, except against a strong combination, the great ocean highways with fair success. But their trade is not all on the ocean highways. Can we also safeguard the colonial seas against commerce destroyers? I will leave this question and its inferences to those who desire, as I desire, that we should remain united with our Dominions and retain their confidence.

I may now take stock of the argument, so often used and so seldom investigated, that the right of enemy capture is the means by which we can hope to overcome our enemies. In order to satisfy so broad a statement it would not be enough to pick out one or more than one nation of which it would be true.

It is necessary, and indeed common prudence demands of us, that we shall look at it in a much broader view, and see how far it is true in any of the wars to which we might possibly be committed. Very likely we could hit harder than other Powers with this weapon because we might hope to clear the sea of their battle fleet. We should be more exposed to be wounded by this weapon because our mercantile marine is of enormous dimensions and ubiquitous, and our enemies can acquire swift ships in abundance and convert them into cruisers. We could not ruin any State in this way, but we might heavily injure some of them, and some of them, certainly one, could seriously injure us. If a strong combination were to cover the sea with enough commerce destroyers to make it difficult to escape them, our industries would be in a grievous plight.

Sometimes it is urged that foreign countries have long expressed a desire to see this right of enemy capture abolished (which, speaking generally, is quite true), and that we ought to find in this circumstance a proof that it is our interest to retain it. In truth it is bad for them and bad for us also. It will harass every one and settle nothing. All nations are really partners in their mutual trade, though they may haggle for their respective share of the profits, and what destroys the trade is as mischievous to both as if you took the merchandise they are dealing with and threw it into the sea. Nothing can excuse it but necessity, and there can be no necessity unless the costly sacrifice will avert a still more costly sacrifice of human life and happiness.

But it is time now to look across the sea and ascertain what really are the

opinions of foreign nations and the grounds upon which they rest. All the civilized nations of the world were represented at the Hague Conference of 1907. Forty-four States sent delegates. And among the numerous projects brought to their attention none was more conspicuous than the proposal of the United States of America: "That the private property of all the citizens of the signatory Powers, except contraband of war, shall be exempt at sea from capture or seizure by the armed ships or by the military forces of the said Powers. Nevertheless, this arrangement in no way implies any immunity for ships that attempt to enter a port blockaded by the naval forces of the said Powers or for the cargoes of the said ships." In submitting this resolution the American delegates might point with a just pride to the fact that their country had advocated and, when their adversaries

would consent, had acted upon the principle which it enshrined from the time of Benjamin Franklin onwards, and that so far as self-interest was concerned they stood to gain less by it than other Powers. A discussion, renewed more than once, of quite peculiar interest and importance followed. In the end twenty-two States, including Germany, the United States of America, Austria, and Italy, supported the proposal, while eleven States, including Great Britain, France, Russia, and Japan, opposed it. Thus the Great Powers were equally divided in the voting, but the voting was unimportant in comparison with the debate. Indeed, when the declarations made by several distinguished men representing great continental Powers are scrutinized, several of them might have voted either way, according as they interpreted the effective meaning of the resolution before them. What we are

deeply concerned to know is the way in which this and kindred questions are regarded by other nations. It helps us to adjust our own compasses.

Two considerations force themselves upon my mind in examining these debates. The first is that enemy capture is regarded by some foreign nations, and indeed I believe by nearly all of them, as an instrument of war which is specially useful against a people situated as we are, populous, industrial, dependent for food and trade upon the sea, and living in an island. I do not mean that this was said bluntly and outright, for there are diplomatic courtesies. The second thing that must strike every one is that not a single Great Power (and hardly any Small Power) opposed the American proposal unconditionally, and that every one of them indicated readiness to accept it subject to conditions. Let me illus-

trate what I say by a condensed reference to the views expressed by the spokesmen of Germany, who supported the American resolution, and those of France, Russia, and Great Britain, who resisted it.

Baron Marschall von Bieberstein, the German Plenipotentiary, expressed himself as favourable to declaring the immunity of private property from hostile capture. But before taking that step he thought it was necessary to come to an understanding about the rules which are to regulate contraband and blockade. Unless a series of controversies which surround these subjects were first solved, he was afraid that the abolition of the right of enemy capture might prove to be an unreality, because, under the exceptions proposed to its abolition by the United States, practically the same thing might reappear in other forms by straining the law of blockade and contraband.

The French Government were represented by M. Renault. He declared that the French particularly appreciated the idea of keeping private individuals protected from the direct effects of war, and that if all the States interested could come to an agreement on this subject the adhesion of France would not be wanting. After what had been said he doubted the possibility of an agreement. He agreed that this question was more or less connected with other questions of contraband and blockade, and could not be settled unless they also were settled. He did not at all regard the law of enemy capture as repugnant to the modern conception of warfare. On land there are such things as requisitions, and military occupation inflicts upon the inhabitants a pressure which leads them to make peace. So at sea violent methods would not suffice. A belligerent must have the

means of choking the economic life of his enemy by hindering or suppressing his commerce with the world outside. The capture of merchant ships could produce a disturbance of the economic life of a nation and disincline to war especially a population which might regard with too much indifference the chances of a war confined to strictly military operations, while it might be constrained toward making peace by the almost complete stoppage of its commerce at sea and the consequent increase of prices. Nowadays the use of the sea plays a more important part in the economic life of all nations, and is essential to the very life of some. Further, ships are larger now, and some of them can easily be converted into auxiliary cruisers. Accordingly their capture weakens the means of the State for carrying on a war. And they belong mostly to great companies, so that the

loss is diffused among a number of individuals. M. Renault urged that the State ought to reimburse those who lose by capture, and that the crew of the capturing vessel ought not to be rewarded by prize money. In conclusion, he refused to be a party to abolishing enemy capture until an understanding had been arrived at, which France was ready to concur in reaching, upon the subjects which he had alluded to in the commencement of his speech.

M. Nelidow, on behalf of the Russian Government, said that, for reasons analogous to those explained by the German Plenipotentiary, the question did not seem to them practically ripe for solution, and that before it became so there must be previous understandings, which had not yet been attained. Accordingly nothing could actually be done but to maintain the *status quo*.

The British delegates argued that abolishing the right of capture necessarily involves abolishing the right of commercial blockade, because the object of both these measures is to hinder the enemy's commercial activity and to deprive him as far as possible of the supplies which are indispensable for the maintenance of his economic life. On the other hand, so long as the expression "contraband of war" is not strictly limited to articles which from their very nature can be directly utilized for a military purpose, and so long as each Power individually considers itself authorized to include under this denomination every kind of provisions and raw materials used in peaceful industries, nothing would be easier than to make the exception as comprehensive as the rule. It was therefore evident that the proposal to exempt from capture and confiscation enemy merchant ships and

their cargoes was merely an equivocation capable only of misleading an ill-informed public opinion. At the same time, they intimated that Great Britain would be disposed to consider the abolition of enemy capture if it were to lead to a diminution of armaments. They found themselves obliged to vote against the proposal of the American delegates in accordance with their instructions.

It is manifest that the criticisms of the foreign opponents were directed against the terms of the American proposal rather than against the idea underlying it. And the proposal is in some degree open to this criticism, being apparently intended rather to assert a principle than to formulate with precision the conditions under which it should be applied. The American resolution, to begin with, if literally regarded, would prohibit the capture of private enemy ships, even if they were

being used to assist a fleet by obtaining information. It cannot have been meant that any such service should be rendered with impunity. Such work would render even a neutral vessel liable to capture for affording unneutral service to a belligerent. In the same way the proposed immunity of enemy merchant ships can never have been meant to protect ships that were acting as auxiliary cruisers or gathering to act as transports for the carriage of troops, whether for an invasion or not. That would be unneutral service in a neutral, and, of course, could not be permitted to an enemy. Were the principle that unoffending ships are to be unmolested once admitted, this kind of abuse would be prevented by express stipulation, if any one on reflection thought it was necessary.

But though the resolution is not open to more than verbal criticism on that

ground, it is upon another ground more vulnerable. It proposes to abolish enemy capture, but says nothing about so altering or fixing the law of contraband and blockade as to prevent those laws from being used to reproduce the evils of enemy capture in another form. Baron Marschall von Bieberstein was quite right, but his point concerns our interest as much as that of Germany. It would be quite possible so to strain those two laws as to recover nearly all that had been abandoned by accepting the American view, and it might be possible to discover in the arsenal of precedents some seeming justification for the encroachment. For nearly all maritime States at one time or another have severely strained the general understandings which for want of a better term are called international law. That constitutes no objection to the American proposal in principle. Certainly

there was on their part no idea of giving with one hand and taking back with another, as their record at the Conference on other matters sufficiently shows. But it does make it necessary to consider the laws of blockade and of contraband, and to inquire how far they can be abused and how far they ought to be limited in order to prevent abuse. And, I am satisfied, it will appear that they require to be limited of themselves, and not merely because their limitation will facilitate another reform as well.

I must observe, finally, that the abolition of the right to capture enemy merchant ships does not, as some suppose, mean that the ships of one belligerent will be entitled to trade directly with the other belligerent or to enter his ports. Such communication is prohibited under the general law which suspends business dealings between the subjects of States which

are at war, and it would not be affected by the abolition of a law which authorizes the capture of ships merely because they belong to the enemy State.

I will next proceed to consider blockade and contraband.

## CHAPTER IV

### BLOCKADE

THE right of blockade is directed exclusively against neutrals. Any belligerent State may mark out any ports or coasts occupied by its enemy and prevent by an adequate force all commerce or communication by sea with the interdicted area even by neutrals, however innocent the merchandise they seek to introduce. Possibly blockade had its origin in the practice of beleaguering a fortress by land, so as to force a surrender by starving out the garrison, in course of which the civil population was also starved, not of set purpose but as an

inevitable consequence. If the fortress was on the sea-coast, a blockade to prevent access by sea was the necessary accompaniment of the operations on land, as occurred in the tragic siege of Genoa which preceded the battle of Marengo, when the miserable inhabitants and even the prisoners of war endured unheard-of suffering. That was done in support of a besieging army, but purely commercial blockades have been enforced with quite a different purpose. They are not designed for the reduction of a fortress or as supplementary to military operations on land, but simply to exhaust the enemy by depriving the civil population of all sea-borne food and materials of industry and stopping all trade with them by sea. They affect, and are intended to affect, non-combatants as such, and aim at producing such distress among them that the enemy State will be compelled to make

peace rather than protract their sufferings and encounter the internal difficulties of unemployment and partial famine. This may be right or wrong, but it is desirable to bear in mind the true nature of purely commercial blockades.

Manifestly neutral ships alone are prejudiced by the prohibition of access by sea to the forbidden port or coast, for enemy ships would in any case be liable to capture. Now, the general rule is that innocent neutral trade with a belligerent State is not interfered with either by land or by sea. Accordingly, special conditions must exist before such interference is allowed. Two conditions are recognized as necessary before any neutral ship can be denied its right of access. One is that the blockade must be effective, or, in other words, it must be maintained by a naval force so sufficient and so disposed that any ship trying to get through is

pretty sure to be captured. The other condition is that the ship trying to get through is aware of the blockade having been established. On such terms alone have neutrals hitherto been content to submit to this limitation of their right.

Here, as in most other aspects of international maritime law, Great Britain has a divided interest. Our naval advisers, as will appear from Sir E. Grey's instructions to the British delegates at the Naval Conference, attach the greatest importance to blockade as an offensive weapon essential to this country in a naval war. On the other hand, our enormous commerce with all the nations of the world and our vast business as carriers at sea make it our obvious policy that, when we are neutrals, there should be as little interruption as possible with maritime communications or the movement of trade.

This dilemma, arising from the diversity

of their own interests, has confronted other Powers also. The Continental Powers have, generally speaking, favoured strict limitations on the right of blockade. They have maintained that a definite "line of blockade" must be established, and that no neutral ship can be captured unless it crosses this line. Some of them also have insisted that before the ship can be captured a special notice of the blockade must be given to herself by a belligerent cruiser and entered on her papers, and that she cannot be captured unless after this notice she crosses the line. Such a rule would allow a neutral ship to make with impunity a first attempt to break the blockade. The British practice, on the other hand, in which the United States concurred, treated as an offence any attempt to reach the blockaded port, and dispensed with any notice to the ship herself if the fact of blockade were notorious

or she came from a port where it was well known.

These controversies date from the era of sailing-ships, when the blockading squadron, dependent upon wind and tide, had to be comparatively near inshore, as a rule, if it was to prevent access effectively. They may have their counterparts under modern conditions, but are themselves become anachronisms. If the ships that maintain a blockade were now to keep near in, they would be in great danger from mines and from sudden torpedo attacks. Of necessity they will be much farther out. Also they will have to deal with quite a different class of blockade-runner. As the delegates at the Naval Conference pointed out, ships may have a speed of thirty miles an hour, and attempts to run the blockade will be mostly made at night. There may be sixteen hours of darkness (an extreme case), and so

480 miles might possibly be got over in darkness. Ordinarily, no doubt, the speed would be less and the night shorter, but twenty-two miles an hour for even twelve hours means 264 miles in the dark. Admiral Slade, a British delegate, gave on the same occasion an interesting sketch of the way in which the thing would work. The officer in command of the blockading squadron might keep his cruisers at any distance from the coast. He would dispose them so that blockade-runners would have to pass, at all events, one line of his cruisers in daylight, and he would have scouts in wireless communication with him who might even capture ships if their intention was quite clear. Captain Starke, on behalf of Germany, demurred to the idea that vessels which were to act as scouts could in any circumstances capture a ship for breaking blockade, and said that if this were permitted relays

of such scouts some hundreds of miles apart might, with the aid of wireless telegraphy, cover the whole ocean.

If Admiral Slade's description of what would be done is right, then there is a danger that, with the appliances of to-day, the network may be spread so wide as to enlarge this right of war into something quite different from what it was in the old times and under the old rules. A few cruisers with a score of torpedo-boats in attendance could seal up a much greater extent of coast than could have been attempted by a like number of ships in Nelson's time. And the tentacles might be stretched out to sea to an indefinite distance. Some of the delegates urged at the London Conference that the blockading force ought to be at least within 1,000 miles. That is a long way, but the limitation was not accepted. It has always been a condition of blockade

that it should be effective, and no single ship could be seized unless the guard was so complete that no ship could reasonably hope to elude it. This safeguard was provided in order that it might not be made too easy for a belligerent to interfere with perfectly innocent articles of neutral trade, and a condition, tolerably difficult and costly to satisfy in most cases, was imposed. It would be a great encroachment on the rights of commerce if owing to modern inventions the condition became easy instead of difficult to satisfy, and at the same time the scope of the operations were more extended and more damaging to neutrals than ever.

After discussing within what distance a capture could be effected, the Naval Conference agreed to a form of words, accompanied by an explanatory passage, which leave quite unsolved the real problem how wide and how far out

may the net be spread. It was agreed that no ship might be captured except within the *rayon d'action* of the blockading force, but how this zone of operations shall be ascertained is left quite obscure. Though the explanation borrowed from the French delegates and embodied in the official report is a beautifully finished array of words it affords very little help in fact, and amounts to no more than that the blockade must be effective and the ships maintaining it may be placed anywhere. This is indeed the utmost that any one can tell us.

At first sight it might seem that this view of naval rights, however injurious to us as neutrals, is eminently favourable to us as the greatest naval Power in the world, and the British delegates in their dispatch to Sir E. Grey explaining the results of the Conference congratulated themselves with justice upon having

secured full recognition of the principles advocated by the British Government. Certainly we could with fewer ships than in the old time (though it would need a large force and involve great risks) blockade a great range of coast if the principles recognized at the Naval Conference were adopted. But it would be premature to rejoice at such a conclusion until we have taken into account another principle accepted at the Naval Conference which is quite sure to be insisted upon by all neutral nations and could not be repudiated by our Government in time of war without provoking them almost certainly to join our enemies. Article 19 of the Declaration of London runs as follows: "Whatever may be the ulterior destination of a vessel or of her cargo, she cannot be captured for breach of blockade if at the moment she is on her way to a non-blockaded port." This

principle was definitely and unanimously recognized by all the Great Powers. In technical phraseology it repudiates the doctrine of continuous voyage as applicable to blockade. To avoid technical phraseology I will try to explain the effect of this provision by practical illustrations.

Suppose that we were at war with France and had established a complete command at sea, sealing up the French fleet in their harbours, and were so powerful that we could establish an effective blockade of all her coasts, the Channel, the Atlantic, and the Mediterranean coasts. An American merchant ship (or any other neutral ship) comes up the Channel with a cargo of foodstuffs or cotton or other merchandise, not contraband, bound for Antwerp, but intended to be forwarded thence by rail to France. Or she comes across the Atlantic bound for Lisbon, or through the Straits of Gibraltar

bound for Genoa, and in each case the cargo is destined to be forwarded to France by rail. In no one of these cases could we interfere, nor according to British rules could we ever have interfered, with either ship or cargo. We must not blame for this state of things any supposed complaisance of our delegates at the Naval Conference. Even if Article 19 of the Declaration of London had been diametrically the contrary of what it is, the practical result would have been the same. There is no necessity for the cargo to be expressly destined for France. It might be invoiced to an Antwerp or Lisbon or Genoese merchant without any ulterior destination being disclosed, and it would be quite impossible to prove that it was to be forwarded to France. In practice, as the Declaration of London has not been ratified, perhaps this is the way in which the thing will be done. How-

ever powerful our Navy, we cannot prevent it being done without blockading Antwerp and Lisbon and Genoa, which is of course an act of war against Belgium and Portugal and Italy. We should have to go further and blockade with the like consequences all the ports of the Continent and go to war with Europe. The thing is absurd. But all this means that, no matter how complete our blockade, all the merchandise that our enemy could desire would safely be carried to some neutral port and thence by rail into France or any other place on the Continent.

Another aspect of the same rule is embodied in Article 18 of the Declaration of London, but neither needs nor derives authority from that much-canvassed document, for it is already incontestably the law. "The blockading forces must not bar access to neutral ports or coasts." Suppose we are at war with

Germany. It is commonly supposed that in such case we could make great play with the right of blockade. It is thought by those who are uninstructed that we might close the Baltic to neutral trade with Germany by stationing cruisers at the entrance of that sea. We could not do so. Any neutral ship bound, say, for a Russian port, could enter the Baltic if that were her immediate destination. She might have an undisclosed ulterior destination to a German Baltic port, and with complete impunity might go there with such part of her cargo as was intended for Germany. But, it is said, we could at all events blockade the North Sea ports of Germany. Look at the map. A neutral ship could go without interference to Antwerp, and if we wished to forbid her from proceeding thence to the adjacent German coast we should have to establish a blockade quite near inshore

to bar access from the Belgian territorial waters to the German territorial waters. Naval experts must say whether this could be safely and effectively done. Even if it could be done, we should still be face to face with the same problem as before. Antwerp and Rotterdam and all the other neutral ports accessible by rail to Germany could still receive seaborne merchandise and forward it to that country in spite of the blockade. Germany could go on sending her exports for shipment at Antwerp and receiving her imports at Antwerp in neutral vessels.

I might pursue illustrations all over the world with every Power, but it would be inappropriate to enter upon so much detail. Let me therefore summarize the conclusions, leaving it to those who are interested in this subject to pass judgment on their accuracy.

Blockades, under the existing law as

held by, and certain to be enforced by, belligerent nations, will affect a much larger area of coast than formerly, owing to the inventions which have increased speed and facilitated telegraphic communication at sea, though they will be dangerous to the ships concerned, owing to other inventions, such as torpedoes and mines. On undefended coasts they may seal up maritime access with ease and without risk. In war against savage or undeveloped territories they may bring the severest pressure by stopping supplies of necessaries which from defective means of land transit cannot be furnished by inland carriage. Where there is an inland sea with a narrow inlet, such as the Mediterranean, or Black Sea, or Baltic, blockade would be effectual in choking industry only if the blockading Power were at war with all the nations occupying the littoral, which is a wholly extravagant hypothesis.

And even then there would remain the power of procuring supplies from distant neutral ports by rail. But if any of the nations inhabiting the littoral were neutrals the narrow inlet could not, without a flagrant violation of neutrality amounting to an act of war, be closed so as to prevent free access to the neutral ports from which the enemy could be plentifully supplied by rail. It is manifest, however, that even though the adjacent neutral ports could receive supplies and forward them to the blockaded country some industrial distress would be occasioned, more or less according to the proximity and convenience of the neutral ports to the district needing supplies. How deep this distress would be must depend, further, upon the economic condition of the blockaded territory. If it had a great industrial population whose material industry required seaborne

materials, or if it depended to a vital degree on seaborne foodstuffs for its maintenance, or if its railway system was imperfect, each of these circumstances would aggravate the distress. If all were present together, the distress might become very acute. But this cannot be said of any among the great nations of the Continent.

Nevertheless, there is another side. Sir Edward Grey, in his instructions to the British delegates, dated December 1, 1908, expressed a very prevalent opinion when he said that Great Britain's "absolute dependence on the possession of sea power for security makes it imperative for her to maintain intact the weapon of offence which the possibility of effectually blockading an enemy's coasts places in the hands of a nation having command of the sea." No doubt our blockades have been of service to us in

past history. If the facts are closely examined, I think it will generally be found that they have been serviceable as a means of stopping supplies from an army in the field, such as the blockade of the Riviera during Napoleon's campaigns, or that of the Southern ports in the American Civil War in aid of the Northern forces, auxiliary to the one army and directed against the other. And it is noteworthy that in the great commercial blockades towards the latter part of the French revolutionary wars, so far from trying to prevent British merchandise from getting into France, our merchants were encouraged to sell to the Continent, and did so on a large scale, though neutrals were prohibited in a way which confessedly went beyond the legitimate rights of war. Be that as it may, neutral ships can now carry enemy merchandise to neutral ports without im-

pediment, and all the Powers who can be formidable to us have sufficient railway communication by land to take the edge off any blockade. And this makes all the difference.

Let us see, then, to-day what is the true value of this weapon. Few people would dispute that by a blockade on a large scale, using at the same time the weapon of enemy capture, we could cause a good deal of loss and disturbance to the business activities of any Great Power. But are we really warranted in the expectation that we could by this means reduce to submission any one of them? Would France with her great resources be driven to sue for peace because she had to import what she needed through Genoa instead of Marseilles, or through Lisbon or Antwerp instead of Bordeaux or Calais? It would cost her more money, but not any very great sum in com-

parison with the vast expenditure that must in any case accompany a state of war. The same question must be answered in the same way with respect to Germany or Italy, or, indeed, any other nation you please, and the same doubt must always arise whether we could spare from our own shores and from the task of protecting our own commerce, under the existing maritime law, enough ships to effect such a complete blockade as would shut up all the coasts and ports of our enemy. It is more difficult to exhaust a nation now, for, apart from the facility of transport, the fruits of the earth and all manufactured goods are now infinitely more abundant and portable than they were, and on the whole far cheaper.

Blockade must always be allowable to sustain a siege by land or to prevent the supply by sea of stores or provisions to

an army on shore, or with some purpose directly associated with the fighting forces, such as shutting up a fleet or closing an arsenal. But commercial blockade, which aims at impoverishing the civil population and arresting its industry, should be abolished. Our mercantile community and that of all foreign nations will surely desire its abolition. And the common interest of all nations points in the same direction. I have given reasons for believing that it could not bring any great nation to its knees, except our own country, and then only in circumstances so extremely improbable as not to be worth estimating by any imaginary enemy. It might, indeed, be used to harass us, as, for example, the American fleet might close Halifax or the Gulf of St. Lawrence, or the Japanese fleet might seal up some part of the Australian coast. But

no one Power could subdue either Great Britain or the British Dominions by such means. On the other hand, we might severely harass and impede the trade of other nations, but could do no more, and they, too, would find their account in putting an end to purely commercial blockade as a proceeding wasteful to everybody and of supreme value to none, unless it be as a punitive method with uncivilized communities. By ending this practice, so irritating and prejudicial to the innocent trade of neutrals, including ourselves if we were neutral, we should remove one dangerous source of foreign complications and of the competition in armaments.

Any consideration of this subject would be incomplete which was restricted to the methods of blockade hitherto in use. In very recent times the use of explosive mines in warfare at sea has attracted

much attention. I shall deal with it separately, but it has a direct and most serious bearing upon the immediate matter in hand. If a belligerent may plant submarine mines wherever he pleases, in front of any port or any coast of his enemy, by letting it be known that the waters are mined he can frighten off neutral merchant ships far more effectually than by stationing there any naval force. It would very likely be enough to announce that a stretch of waters was mined without doing more. At all events, some time would elapse before the deception was discovered. In this way all the guarantees against unreal or inadequate blockade would become valueless. Mines are cheap enough, even if they are actually laid. Warnings, well or ill founded, are cheaper still. You could effect a blockade by mere terror over a large area if you could succeed in blowing up some merchant ship

in a small area planted with mines. It will be seen in due course how unsuccessful were the efforts made by our Government to obtain security against these analogous dangers. While we insist upon the ancient right of blockade, and claim to use it as a means of disorganizing the industry and reducing to want the civil population of our enemy, but insist also upon its being done only by the ancient methods (that is, by a patrol of armed vessels), others who have not command of the sea will certainly use against us these new and horrible methods of enforcing the ancient right. But I prefer to reserve further comment till the question of submarine mines has been considered by itself and as a whole.

# CHAPTER V

## CONTRABAND

THE rule of international law which allows a belligerent State to capture contraband is based upon the theory that when two States are at war no neutrals are entitled to interfere. If a neutral State lends help to either of the combatants it exposes itself to attack from the other. If individual citizens do so by furnishing supplies by sea of a contraband character, they incur the risk of seizure and confiscation. It will be observed that this restriction upon the freedom of maritime commerce differs from the others which have been already

discussed. Enemy capture is confined to enemy property. Blockade applies to property of all kinds if found in the prohibited zone and directly destined for the blockaded territory. But contraband is limited to property of a particular kind which is destined to the belligerent, and it may be captured anywhere at sea except in neutral waters. Such is, in quite general terms, the theory upon which the doctrine purports to proceed.

So stated it all seems simple enough. But when applied nothing has given rise to more misunderstanding and wrong or more frequently caused international difficulties. No one disputes the proposition that neutral merchants are entitled to carry on their traffic with belligerent States except where it is necessarily interfered with by the operations of war. Mercantile men ask that they should be told explicitly what kind of merchandise may

not be conveyed to a belligerent and to what place or person they are forbidden to convey it. The answer must be, under the existing law, that each State when at war claims to determine both these questions for itself in its own courts without appeal, and that many States have in past time prohibited, with or without express notice beforehand, an enormous variety of goods being carried to the enemy territory, or even to neutral ports on suspicion that they are intended for the enemy territory. And to make confusion worse confounded, the same States have frequently adopted different rules in accordance with their supposed interest for the moment.

No purpose could be served by entering upon the long and minute history of the disputes that have been protracted over centuries upon this subject. An example or two will suffice. Long ago Great

Britain announced her intention to seize as contraband all provisions being carried to any French ports upon the ground that there was a prospect of reducing France by famine. On the other hand, the First Armed Neutrality in 1780 demanded that contraband should be confined to articles exclusively used for war, called "absolute contraband." France and Russia, with other States, gave their adhesion to this principle. Time went on. In 1885, when at war with China, France declared rice, a staple food of the Chinese population, to be contraband. In 1904 Russia, when at war with Japan, announced her intention of treating as contraband everything intended for warfare by sea or by land, as well as rice, provisions, and horses, beasts of burden and others which can be used for a warlike purpose. The Russian instructions to their commanders also included as contraband all kinds of

fish and fish products, with beans and cotton. Great Britain objected in both 1885 and 1904. So wide has the net been spread and so variable is the policy of Governments.

These examples may be said to indicate the high-water mark of the rival contentions. Some States sometimes have claimed that nothing can be condemned as contraband except goods exclusively used for war. The same and other States have sometimes treated as contraband such things as foodstuffs, horses, cotton, and a great variety of articles commonly used for peaceful purposes, though also used by soldiers and sailors because they are human beings. Similar divergences have occurred in regard to the other question, whether the contraband merchandise is being carried to or destined for the belligerent. Some States sometimes say that it cannot be captured unless its

destination is to the belligerent territory and for the belligerent Government. The extreme view on the other side is that, no matter what its port of destination may be, it can be captured if it is intended ultimately to reach the belligerent territory. Between these several extreme views there have been numbers of intermediate claims and contentions. There is not enough security that a merchant shall get notice of what he is to expect before starting upon his venture, and no security at all that the restrictions imposed upon his business shall be either reasonable or consistent or that they will be fairly interpreted by the partisan foreign tribunal which has to decide whether he has forfeited his property or not. He is sometimes left in complete bewilderment.

The practical effect of the law of contraband, pushed to an extreme, was shown in 1904, when Russia announced her in-

tention to seize all the articles which I have already enumerated. Had this extravagant policy been acted upon it has been said that out of 29 million pounds worth of merchandise annually imported by Japan in time of peace no less than 21 millions would have become in the Russo-Japanese War liable to seizure as contraband. At one time the rate of insurance covering war risks for voyages from England to Japan rose as high as 40 per cent. There arose a suspicion that German commerce would be treated more favourably than British, as our relations with Russia were not very friendly, and for a short time British shipowners refused to carry merchandise to Japan at all. Concessions were made by Russia, whose situation would have been much aggravated if her obstinacy had provoked Great Britain to declare war, but the incident brings out very clearly the dangers

which may arise. The law of contraband may be used so as almost to extinguish neutral trade, and to produce nearly the same effect as a blockade without the risk and effort of employing a sufficient naval force. A mere paper announcement of an intention to apply it rigorously might suffice to paralyse trade, and so to increase rates of insurance as to deter shipowners from encountering the risk and expense. And a sense of the injustice, especially if the belligerent is supposed to be surreptitiously favouring some other nation, may easily raise such a storm as will hurry a neutral State into war. This and other experiences of the Russo-Japanese War had much to do with directing special attention to these problems of maritime law in the two Conferences of 1907 and 1909.

Taught by these experiences, the British Government made a bold proposal in

1907 at the Hague to abolish the law of contraband altogether. I must return to it presently, but on its rejection by the Powers the Naval Conference in 1909 took up the task of ascertaining and regulating the law. To this effort I will now draw attention. The representatives of the Powers were men of undoubted knowledge and ability, and they spared no pains to arrive at an agreement, being evidently conscious how much it was wanted. After long deliberation and a good deal of compromise they agreed to the clauses contained in the Declaration of London which seek to answer the questions what merchandise is contraband and when it may be so treated.

In this document a list is drawn up of absolute contraband—that is, of articles used exclusively for war. It contains everything now known that can come under that description, such as guns, ships,

explosives, and so forth. But, wide as it is, any belligerent State is authorized by notice to other Powers to add any fresh article of the same description to it. And all such articles may be captured at sea by a belligerent if shown to be destined either directly or by some ulterior route through neutral ports to enemy territory or to the armed forces of the enemy.

A second list also is drawn up of conditional contraband—that is, of articles susceptible of use in war as well as for purposes of peace. It contains a great number of the ordinary commodities of commerce, such as foodstuffs, forage and grain, clothing, coin and paper money, vehicles, boats, fuel and coal, harness and saddlery. All this and many other kinds of merchandise may be captured when found on board a vessel bound for the enemy territory or for the armed forces of the enemy. Any belligerent State can

by notice to other Powers add any article of the same description to this list, and it will be liable to the same treatment—that is, to confiscation.

The Declaration of London contained a third list of articles which could not under any circumstances be treated as contraband of war. This free list includes some goods, like raw cotton and wool and metallic ores, which are important in industry; but a comparison between what is there and what is still left liable to condemnation at the pleasure of any belligerent State must be very disquieting to those concerned in the trade of this country.

There are other provisions dealing with the evidence to be required in order to prove an enemy destination or a destination to the armed forces or Government of the enemy State, together with a series of presumptions, rebuttable and irre-

buttable, as regards the knowledge of the ship's master and the voyage of the ship, and so forth. All these elaborate provisions remain as a monument to the skill and patience of the Committee which framed them, and if any one is disposed to be hypercritical, he ought in justice to remember that the original intention of this Conference was to codify the existing laws, and their application was to be in the hands of an international prize court in the last resort, so that some protection might be expected by innocent traders against the arbitrary action of belligerent States and the bias of belligerent courts. But the international prize court has not been established, and the Declaration of London has not been ratified. And the only permanent value of these praiseworthy efforts is to show how impossible it is to hammer out a code which men will regard as just, when the root prin-

ciple of it is that neutrals may be stopped from trading in every-day articles of innocent commerce because belligerents fear they may possibly be used to feed or clothe their enemies.

That the Declaration of London, while codifying, was meant to bring also some alleviation of the hardships which have been for centuries the subject of complaint, few will deny who know the history. But under the law which it sought to codify a merchant would be under great difficulties, entangled in a labyrinth of shifting presumptions, and compellable any day to discontinue a long-established branch of his business by the peremptory notification of some belligerent State, because its advisers lost their heads. Beginning with the rudimentary idea that a neutral ship ought not to arm a belligerent by delivering to him a cargo of cannon and gunpowder,

the doctrine of contraband has been developed by some Powers into something like a maxim that a neutral ship ought not to carry anything that may ultimately reach the enemy's territory and help to maintain even the civil population. Even as it took shape in the Declaration of London, containing 28 classes of prohibited articles, many of them most comprehensive, with power to add to their number, it might have come dangerously near a suppression of much neutral commerce in the hands of an unscrupulous belligerent. The only control short of war was in the hands of an international court. Even the Declaration of London has not been accepted by the Powers. But it is the principle that is at fault, not the Declaration.

The remedy proposed by the British Government and rejected at the Hague in 1907 was to sweep away the cobwebs

and abolish contraband altogether. This proposal was renewed with like unsuccess at the Naval Conference two years later, but the discussion in 1907 gives the best indication of what the various Powers thought upon the subject, and is an interesting part of these memorable international proceedings, from which, with all their limitations, much profit to the cause of peace and civilization must in the long run accrue.

The British delegates urged that the doctrine of contraband was incompatible with modern conditions. In the old times of sailing-ships a voyage by stages was unusual, contraband consisted principally of articles exclusively used for war, the ship's port of destination ordinarily sufficed to indicate the true destination and the illicit character of the cargo, the size of ships was relatively small, and it was easy to exercise the right of search.

And so the prohibition was effectual. Now, however, the progress of science had in a remarkable degree augmented the number of articles which could be described as conditional contraband. Further, steam navigation, with many stages to the voyage, had led to singular complications sought to be met by the doctrine of continuous voyage. On the other hand, owing to improved methods of land transport, contraband could easily elude the prohibition. ' Finally, the great size of ships in these days, the great variety of the cargoes they carried, the unavoidable ignorance of the masters as to the nature of the goods stowed in his ship all rendered a search at sea difficult, nearly always made the prohibition ineffectual, and in any case tended to inflict upon neutral commerce a degree of annoyance out of all proportion to the legitimate interests of the belligerent.

Twenty-six States supported the British proposal, five voted against it, and four States abstained from voting. Nine took no part at all. But unfortunately the five opponents were a formidable phalanx: Germany, France, Russia, the United States of America, and Turkey declared for maintaining the principle of contraband. Their main reasons were that it was required for legitimate self-defence, and that the right of checking this kind of traffic by private traders of a neutral State was justified by the fact that neutral States took no responsibility for checking it themselves. The effect of the altered character of commerce and navigation had, they thought, been exaggerated. There was no difficulty, for example, and no annoyance to innocent commerce in searching at sea ships laden with a cargo of coal. If free traffic in implements of war were permitted, would

not commerce itself thereby acquire an interest in the continuation of hostilities? Is it proper to favour such sources of private gain? If the present uncertainties, they asked, lead to inconvenient results, would not abolition be rather too drastic a remedy, and might it not lead to even graver difficulties? Besides, remarked the German delegates, if the doctrine of continuous voyage were, as they suggested, put an end to, the interruption of commerce would be reduced to the narrowest possible limits.

At a later stage the United States intimated that, though they had been opposed to abolishing contraband altogether, they were favourably disposed to limiting it so that nothing could be so treated except articles exclusively used for war. We are therefore entitled to assume that, at all events, all neutral merchandise except materials of war could be made

free from interruption in time of war but for the opposition of Germany, France, and Russia. This of itself would be an immense step in advance—not so drastic or complete as the British proposal, but still a step of vital importance to all the trading interests of the world, for articles exclusively used for war form a very small part of the commodities carried by sea. Ordinary commerce would be completely emancipated. But how are we to explain the opposition of France, Germany, and Russia?

There is a very intelligible feeling at the back of the opinion that private traders ought not to be allowed to supply with impunity materials of war for the use of belligerents in time of war. When the armed forces of a nation are engaged in deadly combat they cannot be expected to learn with composure that their enemies in the field are receiving rifles and car-

tridges and quick-firing guns from enterprising manufacturers who are tranquilly enjoying the blessings of peace in some neutral territory. If belligerents cannot stop it by land, they will at all events try to stop it by sea, and it is no satisfaction to them to be told that the same manufacturers will, for an adequate consideration, cheerfully supply both sides at the same time. Those who remember the Franco-German War, forty years ago and more, will recall how much irritation was caused in Germany by traffic of this kind across the Channel. At such a time it is regarded as an odious trade; and though it really is no more reprehensible, whether you regard the motive or the consequences, to sell instruments of destruction when men are fighting than when they are preparing to fight, yet at such a time human nature will not endure it. We must not be surprised when it is said that

to tolerate and leave in security such a trade gives commerce a direct interest in the continuance of hostilities. The statement is true as regards the small part of commerce which is concerned with that kind of business, though the comment ignores the infinitely greater part of commerce which gains nothing and loses much by any war.

There is much force also in the objection that unless a belligerent State can capture contraband it cannot have any protection against the unlimited supply of these warlike stores to its enemy by sea, because neutral States are not under any duty to prevent their subjects from engaging in that class of traffic. Indeed, neutral duties on this and kindred points are not very logically imposed. A neutral Power may not itself supply warships, ammunition, or war material of any kind to a belligerent Power, but is not bound to

prevent its citizens or subjects from supplying arms, munitions of war, or, in general, anything which could be of use to an army or fleet. Nevertheless, a neutral Government is bound to employ the means at its disposal to prevent the fitting out or arming of any vessel within its jurisdiction which it has reason to believe is intended to cruise or engage in hostile operations against a Power with which that Government is at peace, or the departure from its jurisdiction of any such vessel. In short, it need not prevent its subjects or citizens from selling or exporting materials of war, but is bound to prevent the arming and exporting of a ship intended to take part in the war. You may allow private traders to fill a vessel to the gunwale with shot and shell and rifles and guns if she is only going to deliver them to the belligerent fleet, but if she is going to take any part in

hostile operations herself, the neutral Government must use the means at its disposal to prevent her from sailing. As to the supply of war materials, the belligerent must look after himself in this respect, and therefore claims the right to seize contraband.

These considerations explain the determination of the opposing Powers to maintain the principle of contraband so far as articles exclusively used for war are concerned, and they receive emphasis from the recollection of wars in which British merchants supplied this kind of goods. They also explain in part why France, Germany, and Russia wish to keep the right of seizing merchandise other than munitions of war. When a nation is at war its armies may be in great want of shoes or clothing or provisions, and a timely supply may enable the belligerent to continue his resistance. No doubt that

is the theory on which such merchandise, though useful for peace as well as war, has been liable to capture under the denomination of conditional contraband, and our merchants have often supplied the fighting forces in time of war with this class of goods as well. Our mercantile marine and great resources, as well as our geographical position, make us the natural purveyors of sea-borne goods to most parts of the Continent. There is not a nation in Europe which would not do the same or which could not do it with complete security if the goods were delivered by rail. But as we receive the profit of this trade so we incur the displeasure (though much less than that aroused by the sale of arms) which goes with it. They think that we make money out of their calamities, and forget that they would just as readily make money out of ours. And though the occasions

may be rare where sea-borne supplies are really vital in a war and land-borne supplies are unavailable, yet in every war shipping has to undergo this burden.

A complete method of averting these dangers is that proposed by the British Government. It is true, as our own delegates said, that the law of contraband inflicts upon neutral commerce a degree of annoyance out of all proportion to the interests of the belligerents. It may be, however, that the objection of the Great Powers who opposed us at both Conferences cannot be entirely overcome. In that case an effort upon the lines of the American suggestion might be successful, though hitherto even that has not been accepted. The Americans are a very practical people, but they also have ideals of their own, and in no field more conspicuous or more disinterested than in this. They were favourable to the abolition of

conditional contraband. This would leave liable to capture all articles used exclusively for war, but would protect all merchandise which is available also for peaceful purposes. It would not, it is true, solve all difficulties, but it would largely diminish the area of controversy. And it would do homage to the feeling, which I have described, of aversion to a traffic which most exasperates belligerents in the stress of war. We ought to welcome it.

I would go farther if necessary. At present, as already explained, a neutral State is not accountable for the acts of private traders in exporting munitions or implements of war other than a vessel. If it would facilitate a settlement, I believe it might be wise on our part to agree that every neutral State should be bound to use the means at its disposal for preventing the export of war material in the

same way as it is now obliged to prevent the departure of a vessel intending to take part in hostilities. The Foreign Enlistment Act would have to be amended. It is not, I agree, desirable to increase unduly the responsibilities of the Executive Government in such matters, and it is not a very easy task to undertake. But it could be done without excessive labour, for example, by requiring a suitable declaration under penalties as to the character and destination of any merchandise of the prescribed kind from the master or owners of any ship leaving our shores in time of war, and from the shippers, provided it were made clear that no State should be responsible if it acted in good faith and with reasonable diligence. This, however, is, I admit, a subject requiring a good deal of consideration.

If, however, it were impossible to pro-

cure a general consent to the abolition at all events of conditional contraband, it might be possible in the last resort, as part of a comprehensive reform of maritime law, to secure the exemption of food and numerous other classes of goods which, though they may possibly be useful for military purposes, are not largely so used, and in regard to other such things to substitute a right of pre-emption for a right of confiscation. Where a belligerent is bound to pay for what he takes he will not take more than is necessary. If this were done, with a wider free list and stricter proof required to prove an enemy destination, the greater part of the mischief would disappear. But such a solution cannot be expected without corresponding concessions in other matters upon which hitherto this country has been unbending.

Of one thing I am quite sure. Unless

some arrangement can be made upon this subject of contraband, most serious trouble awaits us when next we find ourselves neutrals in some great naval war.

# CHAPTER VI

## MINES

THE last of the risks to which commerce will be exposed in time of war and which calls for separate examination is that arising from the use of marine mines. Explosives of this kind were used as long ago as the American Civil War to defend harbours, but it was not till the Russo-Japanese War, in 1904, that they were used on the high seas so extensively and with such results as to cause widespread alarm. And the perverse ingenuity which has perfected so many other engines of destruction has greatly developed their manufacture.

There are several kinds of them. Electric mines are discharged by an electric current from the shore or from some stationary ship, but will not explode merely by contact. When well made and well managed they will do no harm to innocent ships. Then there are automatic contact mines, which explode whenever any hard substance strikes them. If they are anchored, they are destructive to all sorts of ships that cross the particular area which is planted with them. They can be avoided if, but only if, the officers of the ship know where they are. Also they are liable to break loose. There are, however, mechanical contrivances by which they can be made to sink when they do break loose, and if so constructed the danger is, of course, diminished.

Automatic contact mines need not, however, be anchored. They may be thrown

overboard by a ship (many scores of them by one ship) and allowed to drift wherever wind and tide may carry them, like the bottles in which messages from the sea are carried sometimes to very great distances. Any vessel that strikes them is pretty sure to be destroyed, and they will infest the sea for months, if not for years. They can by proper methods be so constructed as to become harmless in a very short time—that is, if the mechanism acts. And it is the same with torpedoes, which, after they have missed their aim, are of the nature of unanchored automatic contact mines. When there is no anchor and no provision for rendering harmless these engines of destruction, the possible consequences of their use are so dreadful and so undeniable that even those who habitually deride what they call "pacifism" have been moved to language of horror and indignation. Perhaps there

are other refinements in the nomenclature of mines with which I am unacquainted.

During the Russo-Japanese War much use was made of marine mines. Which side planted most, or what kind either side planted, or what precautions they took I will not attempt to affirm. Plenty of them, not under any control, were seen in Far Eastern waters. They may have broken loose. Two battleships, one Russian and the other Japanese (some say more), were blown up, and a Russian storeship, which was employed in laying mines had already laid 389 when she was herself blown up by the 390th. More particulars are given in Mr. Lawrence's admirable book on "War and Neutrality in the Far East," from which I have derived these figures. An appeal to the Powers was made at the Hague by the Chinese delegates, whose waters had been the scene of the naval operations in that war. They said that

even at the date of the Conference (1907) they were still obliged to furnish their coasting ships with instruments for picking up and destroying the floating mines which encumbered not only the high seas but their territorial waters also. They added that despite all precautions a very considerable number of small vessels had perished with all hands, unknown to the Western world, and estimated that five or six hundred Chinese, while engaged in their peaceful vocations, had met a cruel death from these dangerous engines.

At the Hague Conference our delegates made great efforts to protect shipping from these obvious dangers. Unfortunately, some other nations did not take our view, and a most lamentable failure must be recorded. It is unnecessary and would be unprofitable to give more than a brief sketch of proposals which bore so little fruit. It was pro-

posed to declare all automatic contact mines illegal, at least for a time. That was rejected. It was proposed to forbid drifting mines altogether and to allow anchored mines only if they were so made as to become harmless as soon as they broke loose. Both these proposals were rejected. A proposal to forbid anchored mines except in the attack or defence of fortified ports also failed. Attempts were made to ensure that at all events the scientific means available for rendering mines harmless after a certain time should be employed, and that they should not be planted everywhere on the high seas. The fate of all the efforts made for the protection of commerce will best appear if I state the net result of what was agreed to and see what is the protection really afforded.

The Conference agreed, subject to later reservations, that unanchored mines

should not be used unless they were so constructed as to become harmless one hour at most after those who laid them have lost control of them. But what is losing control of them? If, for example, scores of them are attached to a long cable and towed up or down in front of some port, has the towing vessel lost control?

Anchored automatic mines are forbidden unless so made as to become harmless as soon as they have broken loose from their moorings. Excellent so far as it goes, if it were not nullified by later reservations. And the same may be said of the similar provision about torpedoes.

It appears that the mines possessed at present by some of the Powers, both to be anchored and to drift, are not constructed in the way described. There is no prohibition against using them. The old stock may apparently be used up, and

the Powers undertake to convert the material as soon as possible. But the Conference refused to fix any limit of time for this conversion, and some of them appeared to doubt whether the precautions required could be made effectual in the present condition of science.

There are provisions of a general kind requiring every possible precaution to be taken for the security of peaceful navigation, which in face of what is permitted amount to little more than benevolent expressions. Peaceful commerce must take the risk of the precautions being ineffectual or being neglected, or becoming impossible by reason of the haste and danger necessarily accompanying the laying of mines by a belligerent ship exposed to attack from its enemy.

Neutrals also are authorized to lay mines for the protection of their own coasts, against violation of their neutrality,

I presume. In time this liberty may harden into a duty to use these mines in order to preserve their neutrality.

Notice of the places which are mined must be given by neutrals, but in the case of belligerents the duty of giving notice is to arise only so soon as military exigencies permit. When a belligerent wishes to blow up his enemy's warships unawares he will obviously keep his information to himself.

One other rule must be noticed. Article 2 of the Convention which prescribed these rules provides that "it is forbidden to lay automatic contact mines off the coasts and ports of the enemy with the sole object of intercepting commercial navigation." This alludes to the possibility of establishing a blockade merely by laying mines. It is obviously quite inadequate to prevent such a practice, for nothing would be easier than

to say that one of the objects was to prevent the enemy from finding shelter in some commercial port or receiving supplies from it, and that the interference with commercial navigation was merely a regrettable consequence. It would be a blockade of the most effective kind, carried out under another name and without any safeguard or responsibility.

These rules, of which only a summary has been given, have (up to December 20, 1912) been ratified by all the Great Powers except Russia. But the ratifications are not unreserved. France and Germany do not bind themselves to the second Article, which relates to effecting a blockade by means of mines. Great Britain makes her reservation to the entire Convention in the following words: "In affixing their signature to this Convention the British plenipotentiaries declare that the simple fact that it does

not forbid this or that act or proceeding must not be considered as depriving his Britannic Majesty's Government of the right to contest the lawfulness of such act or proceeding."

Let us see what is the general result of this most lamentable failure on the part of an International Conference to procure elementary justice for inoffensive commerce. These terrible engines of destruction are not prohibited on the high seas or in the waters of either belligerent, or in straits and narrow waters, even those connecting two seas. They may be anchored anywhere except in neutral waters. They may be cast adrift in the hope of destroying an enemy warship, notwithstanding the much greater probability that they will destroy some of the far more numerous ships of innocent traders who frequent the seas. The precautions stipulated that they shall be made

so as to become harmless after a short time or on getting loose are illusory. No one can be certain that they are so made. No one is quite certain that they can be so made as infallibly to ensure their becoming harmless. No one can be sure that in the stress of war there will be opportunity to make certain even of the limited security being carefully attended to. And there is no real duty imposed to refrain from using the stock in hand of admittedly unsafe mines. Further than that, belligerents are not bound to give notice to neutrals when any waters are mined, if military considerations require, as they nearly always may require, that the secret shall be kept. At the end of the war the Powers which laid them are to do their best to remove them. During the war they may be a constant source of the utmost danger.

Such is the condition which may arise

so far as any prohibition on the part of the Powers is concerned. That does not mean that this state of things is lawful or that it will be recognized as such. Our own Government did its best at the Hague to safeguard our own seamen and ships as well as those of other nations from these hidden dangers, and our reservation intimates clearly that the duty of belligerent States in our view goes beyond that which the Conference acknowledged.

It is quite unnecessary to point out how grave is the situation, so far as shipping is concerned. It speaks for itself. Equally grave is the possible effect upon peace of these new terrors. Let any one picture to himself the effect of some British merchant ship or liner or battleship being suddenly sent to the bottom by one of these mines in the course of a war in which we were neutral. Or let the same thing be imagined as happening to a

German or American vessel. Perhaps not one but several in succession might fall victims. What China, a distant Power, weak at present, and with whom our sympathies are not so quickly aroused as with a nearer neighbour—what China endured might become the fate of ourselves or of some European nation. Can any man doubt that a flame of uncontrollable anger would be kindled which in any powerful State could hardly be quenched by professions of regret or even by the tender of an instant undertaking to discontinue the use of mines. Among all the latent forces which threaten the peace of mankind, one of the most formidable is the furious spirit beneath the surface which may be suddenly roused by a sense of cruel and unprovoked wrong, especially if those who commit it are not at the moment thought to be very friendly. If there are to be wars, at all

events let them be undertaken deliberately by responsible Governments at times when the chances and the necessity can be coolly weighed. There would be very few if that condition were always present. And so it always has been the effort of wise men to keep provocations to war as far as possible out of the range of popular passion, and to cultivate a good understanding, not merely between Governments but also between nations, so that, if a tempest does arise, it may not be in an atmosphere charged with national antipathies. Should any such incidents occur as I have indicated more than common goodwill would be needed to prevent a calamitous issue.

We do not need to impress upon our own Government, I feel satisfied, the importance of continuing their efforts to avert the dangers that must arise from the use of marine mines. Perhaps it may be well

that we should appreciate the true reasons which incline some foreign Governments to retain the right of using them. Captain Castiglia, the Italian naval delegate, pointed out at the Hague that mines provide a cheap form of defence for States with a weak navy, and are of value, for purposes of coastal defence, also in the hands of States with a strong navy. Another delegate (Admiral Siegel, of the German navy) said that mine-laying ought not to be restricted to the territorial waters of the belligerents, because they might have to be laid perhaps twenty miles from a blockaded coast in order to defend it. He also observed that a squadron flying from a pursuing fleet might have to drop unanchored mines in order to check pursuit, and that to make them so as to be harmless within an hour would deprive them of value for this purpose. It is right to add that Germany

was willing to forbid the use of unanchored mines for five years. The German view throughout was put bluntly, and on some points her representatives led the opposition to proposals which were beneficial. If, however, their attitude be regarded as a whole, it is not that of a nation which has made up its mind irrevocably. There are not a few signs of a tendency, which may become stronger, to approximate toward the British view. It surely must be so, for all nations in varying degrees are interested in saving neutral shipping from this menace. Their hesitation in most cases arises from an apprehension of the enormous naval armaments, which have grown greater and greater of recent years and entail an expense that few States can afford and none can desire. Mines cost comparatively little. With a judicious employment of them it is thought that a

blockade can be made practically impossible, that a smaller fleet can escape from a greater, that coasts can be protected from invasion, and that all nations to which the access lies through narrow straits may by this means procure complete exemption from any fleet, however powerful. No more threats of blockading the North Sea ports of Germany or of bombarding Sevastopol or Copenhagen. It is a Roland for an Oliver, and it seems to me that, with the incalculable advances of science, more problems of this kind may arise, and we all may have to consider whether the growing mastery of man over the forces of nature does not constrain him to avoid the methods of war more powerfully than any appeal to his humanity. Even his fighting instinct surely must be offended at the thought of a great vessel, with hundreds of innocent men in her, being destroyed, not in

any fair fight but by a trap laid by some cunning adversary in a chosen moment of security and in the darkness of night.

Mines are the rejoinder to *Dreadnoughts*. But they are a horrible invention, and some limitations ought surely to be accepted before their abuse leads to a conflagration. Automatic anchored mines ought to be prohibited except in the territorial waters of the belligerents, if they cannot be wholly forbidden. Unanchored mines ought to be prohibited altogether, unless used in action, and then should be used only if they become innocuous in a very short time. An International Committee should fix methods for making all kinds of mines harmless after they get loose or get out of control. They should be forbidden for the purpose of establishing a blockade. These are incomplete recommendations. Perhaps they would not be accepted. At all events,

I hope they will be pressed. I would suggest even stronger remedies if I thought they had a chance of being adopted.

The obstacles in the path of those who desire to see such reforms generally adopted are not created only by nations which oppose reform. They are surely if unwillingly multiplied by all who adhere to the doctrine that one nation is entitled to destroy the " economic life " of another nation by employing new inventions of science greatly to extend the old methods of war. We shall appeal in vain to the conscience of the civilized world, as our delegates eloquently did at the Hague, while we maintain the right to make war on commerce and to blockade unfortified towns and afflict the industry of civil populations without imperative military necessity. Soldiers and seamen who undergo in their own persons the dangers

and privations of war may be listened to with respect when they advocate, though they rarely do advocate, severities toward others less grievous than those which they are willing to encounter for themselves. But statesmen have not the same excuse.

# CHAPTER VII

## CONCLUSIONS

I HAVE endeavoured to show that maritime law, as it is understood and will be applied by continental Powers, places commerce and shipping in a very serious position. Several questions will naturally suggest themselves. If this be so, why have we in this country resisted for generations some, at all events, of the reforms that have been suggested? Why have other nations advocated them? And what prospect is there of prevailing upon our neighbours to accept changes which would relieve us from grave dangers?

So far as the attitude of successive

British Governments is concerned, it has always been largely influenced by naval opinion. We do not sufficiently discriminate between questions of strategy, in which naval officers speak with conclusive authority, and questions of policy, upon which they cannot claim to be experts. Mercantile men have been far too silent hitherto, though the opinion of that community is believed to be strongly in favour of a change. It takes time to realize how the danger has been aggravated by recent developments, the subject is a little technical, and we are at all times slow to adopt reform. Also Governments cannot go beyond public opinion.

Nor is it very difficult to explain why other nations have adhered to some things which we wish to alter, and have been prepared to alter some things which we insist upon maintaining. I have pointed out how the various rights of belligerents

at sea are mixed up, so that if one is relaxed another may be tightened up to do very nearly the same work under a different name. Accordingly, Governments are chary of accepting a change in one particular for fear that what is given with one hand may be taken away by the other. There is a school abroad which credits this country with a Machiavellian policy, and holds that from the time of Lord Stowell we have stored up a quiverful of legal quibbles and precedents by which we can recover whatever we profess to concede. They do us injustice. We are neither so clever nor so unscrupulous as they suppose. But some of them think so of us, and very likely of each other also, as appeared when Germany objected to the American proposal for abolishing the right of enemy capture lest it might prove an unreality and its effect might be reintroduced by

a more extended interpretation of blockade and contraband. Clearly this is possible in a very considerable degree, though the suspicion of any such design may be wholly unfounded. If you are entitled to seize ships not only because they belong to an enemy but also because of the place to which they are going or because of the kind of cargo they are carrying, you can easily obtain a pretext for their capture in many cases, by adding to the number of forbidden places or of forbidden merchandise. It is intelligible that before assenting to a change in one respect a State should desire to be satisfied that the change will not be made nugatory by the adoption of some equivalent practice.

It would therefore be premature to suppose that foreign countries will reject a comprehensive plan for amending the law which shall embrace all branches of

this intricate subject. At the two International Conferences in 1907 and 1909 each branch was treated separately by different committees or at different times. The bearing of each on all, or of all on each, was less considered by reason of their subdivision into watertight compartments. If instead of this fragmentary treatment a series of connected proposals covering the whole ground were presented for their consideration, there is nothing in what we know of foreign opinion to make us despair of an agreement. For example, the claim to convert merchantmen into commerce-destroyers on the high seas, on which continental States strongly insisted, would lose its importance if commerce-destroying itself ceased to be lawful. Possibly, even probably, it may appear that the chief reason why others resist our wishes upon amendments of the law which are desired by us is that we resist

their wishes upon amendments which are desired by them.

They have not less reason than we have for dissatisfaction at the present state of things. Continental Powers have to fear the enormous burden of vast armies, numbering millions of men, and in any war on the Continent it is on land and by military measures alone that decisive blows can be struck. Mutual destruction of commerce would be quite a minor accessory, and the victor on land would reap an indemnity for his losses. In case of war between Great Britain and a single continental Power we might suffer severely by the interruption of our trade, but they would suffer more. No decisive blow could be inflicted upon us except by a successful invasion, and the chances of accomplishing that would depend upon naval force, not upon any commercial warfare. For these reasons it is very

natural that they should all declare, as they have all declared, their willingness to accept the immunity of hostile property at sea as part of a settlement which shall include other matters as well. They will, of course, consult their own interest, but it can hardly be to their interest to wage a collateral warfare in which they would probably suffer greatly and could obtain no decisive result. No greater mistake could be made than to suppose that because such a change would suit us it would not suit them also. Costly and unprofitable forms of warfare do no good to any one. They mean mere waste and loss without any corresponding advantage.

Unless some agreement can be reached, I foresee a further increase in the burden of naval armaments both here and abroad. Fifteen years ago our Navy cost us about 21 millions. Last year it cost us about 43 millions. And there have

been vast increases in other countries also. This outlay is in the main for fighting purposes. Other fleets for commerce-destroying and commerce-protecting purposes may be demanded. Just as in former days a stout merchantman might be converted into a ship of war and then by degrees the latter type became specialized, so the modern idea of converting fast cargo-boats into commerce destroyers will very likely soon become obsolete, and special kinds of vessels with great speed and suitable armament will take their place. It will mean another new race in fleet-building, not in substitution for the present competition but in addition to it. Before this supplementary race has gone too far, would it not be well to see whether it can be ended altogether by ending the causes which provoke it?

I do not mean that fleets can be dis-

pensed with, and I leave altogether aside all the controversies as to the size or cost or present sufficiency of our Navy for the duties it has to discharge. My argument is that we should prevent its strength being dissipated upon secondary enterprises which cannot determine the issue of a war, and prevent our resources being wasted upon ships which cannot help in determining the issue but are useful only for inconclusive operations. Of course this can be done only if other nations agree to dispense with these secondary enterprises.

Accordingly, I am anxious that our Government should enter upon the task by preliminary communications with foreign Powers in preparation for the next Hague Conference. It is the proper place of the greatest naval Power to take the initiative, and, if effective progress is to be made, the right way is not to wait

till the representatives of forty or fifty nations are gathered together, each tied by his own instructions and unable of himself to depart from their letter without fresh orders, but to sound the principal opponents beforehand and see if their opposition can be removed in a practical way before the Conference is appointed to meet at all. Large assemblies are apt to be garrulous and expansive rather than practical, particularly when each member is a delegate without authority to act for himself. We have no doubt reaped much profit from the discussions at the Hague in learning what other nations thought and desired. Armed with that knowledge, we can, if we are so disposed, make up our own minds and endeavour to procure beforehand a general concurrence upon the laws of naval warfare and the rights of neutrals, taken not piecemeal but as a whole.

I have already indicated the changes which, in my view, ought to be recommended by this country. All of them rest upon a fair application of the principle that the lives and property of private persons, whether citizens of a belligerent or of a neutral State, ought not to be interfered with in time of war, except under an imperative military necessity. Of course such necessity will arise less often and perhaps may be more rigidly interpreted in the case of neutrals. But the principle, even as regards enemies, is expressly acknowledged by the Fourth Hague Convention of 1907 in more than one Article so far as war on land is concerned.

"It is especially forbidden to destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war" (Article 23, g). Again, "Private property

cannot be confiscated" (Article 46). Pillage is formally prohibited (Article 47). Another provision is as follows: "Neither requisitions in kind nor services can be demanded from communes or inhabitants except for the necessities of the army of occupation. They must be in proportion to the resources of the country. . . . Supplies in kind shall, as far as possible, be paid for in ready money; if not, their receipt shall be acknowledged and the payment of the amount due shall be made as soon as possible" (Article 52). The whole of the Fourth Convention is well worth reading, to show how careful of private rights on land are the nations who have adopted it; and, with the exception of Italy, all the Great Powers have adopted it, some with reservations immaterial to the present point.

Under the code which I have just cited the officer in command of an army in the

field is forbidden to seize, let us say, 1,000 bushels of wheat belonging to some farmer in a conquered country, unless it is needed for his army, and in that case he must pay for it. Well, but a naval officer may seize any merchant ship of the enemy and whatever enemy property it contains, wheat or coin or jewels or anything else, without the least suggestion that it is needed by any one, and the proceeds are divided by the captors as prize money. What is the difference between 1,000 bushels of wheat in a ship and 1,000 bushels in a barn, or, if you please, in a railway train, that the one should be paid for and the other should be confiscated? A general in the field who has conquered and is occupying a part of his enemy's territory may besiege a fortified place and prevent all access to it, so as to reduce the garrison by famine, and the inhabitants who are shut up with the

garrison must of necessity suffer with them. But if he surrounded an area with a cordon of troops and forbade all food or merchandise either to enter or to leave it, with a view of "putting pressure" upon the civil population, and through them on the enemy Government, and making them sue for peace, he would be violating the laws of war. Is there any difference of principle between doing that and maintaining a commercial blockade, except that the one operation would be on the water and the other on dry land. I might multiply illustrations. Put it how you will, the truth is that private property is respected by the laws of land warfare and is not respected by the laws of warfare at sea. And you may shut up all access by sea to any area of territory to impede the civil population in getting food and the materials of industry, whereas you cannot do that on land.

Can any military reason be advanced for this remarkable distinction? Undoubtedly you impoverish the enemy when you seize and confiscate the private property of his citizens. That is not a military reason. And that can be done much more completely by seizing or destroying private property on land, burning the crops and buildings, uprooting the vines, wrecking the manufactories. Such a policy of devastation is absolutely forbidden by the Hague Convention, and has long been regarded as an atrocious policy. It can be done, if, indeed, in any case it is legitimate, only when a particular town or village has offended against the laws of war, as was alleged when Bazeilles was burned in the Franco-German War. In the same way, if you forbid by armed force any communication with a particular area, you do reduce its inhabitants to great distress.

That cannot be done effectually by blockading a coast, because you do not interfere with access by land, whereas an army in the field might do it completely by closing all access and starving every one in the doomed area. You could hem them in by land on every side, and not only upon the one side which is open to the sea. Yet this is not only unlawful, but is an outrage that has never been even thought of in modern times. When there is a siege, and the purpose is to compel the surrender of a garrison, the civil population have to share the privations. No one would defend such a step as depriving by land a civil population of the necessaries of life or stopping their industries for the purpose of reducing them to distress and so inclining the enemy to make peace. The upshot of it all is that under the existing law you may make war upon the civil population

by seizing their private property and impeding their industrial life and their supply of necessaries if you do it by sea, but you may not do it by land. Yet if this kind of pressure is legitimate it can be applied completely on land where it is forbidden, and only incompletely at sea where it is allowed.

Some people might say, indeed have said, that all mitigation in the severity of war is a mistake, due to the softness of a decadent age, and that the proper course is to make war terrible, so that it may soon end. I submit that we ought not to act on this view. It would not be effective. In nearly all cases, if not in all, the only effect would be to inspire the survivors with reckless courage and lead to retaliations which would put peace farther off than ever. For I presume that there will be some survivors, and that it is not proposed to exterminate the adult

male population. What ruined Napoleon was the rising *en masse* of the inhabitants of Spain, driven to madness by brutality. And there is another reason. The object of a statesman ought to be, not merely peace but a lasting peace. This you will not get if you leave terrible memories behind. It is not only present wrong but the recollection of past wrong also, especially private wrong, which creates the animosities that lead to war. No. The nations are right in preventing the "pressure" of ruin and of famine on the civil population being used on land, where it might be applied with excellent prospect of starving great numbers of people. Why is it not prevented at sea when you have so poor a chance of starving people and can only hope to put them on short commons?

Now, the principle upon which are founded all the recommendations which

I have urged is simply this—that at sea as on land unoffending private individuals should be unmolested either in person or in property except from imperative military necessity. Life and property at sea should be protected by safeguards similar to those by which they are safeguarded on land in the Hague Convention.

No suggestion is made that any person or any ship should go unscathed which offends against the rules of war by taking part in hostilities or carrying men who are embodied in the armed forces of a belligerent or transporting a military detachment for hire or assisting his operations or transmitting intelligence. Nor is it suggested that any ship in the employment of a belligerent State or under the orders of its officer or agent should be free from capture. It will be necessary, as a part of the general settlement, to define and prohibit what is called "un-

neutral service," so as to prevent private individuals from assisting in the operations of war. In the same way I should be content that any ship should remain liable to capture which breaks blockade or carries contraband, if it be determined to maintain the law of contraband. What I propose is, as already explained, that while blockade for military purposes remains, commercial blockade shall cease, and that merchandise which is not exclusively useful for war purposes shall not be confiscated as contraband.

In short, the proposal is that unoffending commerce shall not be interfered with and that war shall not be directed against an unoffending population. That covers everything.

At a time like the present, when the nations of the world are constrained by mutual distrust to encumber themselves with a weight of armour which may ulti-

mately of itself break them down, and when their hope of safety seems to rest upon physical force alone, it may be useless, and I have not attempted, to point out that dangers from within may bring a nation to ruin more certainly than dangers from without. That lesson will be learned in time to come. But there is still a hearing for those who suggest methods of at least circumscribing the occasions of dispute, which quickly ripen into war, all the more quickly that to strike the first blow is now thought to give a great strategical advantage. Nothing is more likely—I had almost said nothing is more sure—to enlarge the area of warfare than the uncertainty and unreasonableness of maritime law. When civilized armies meet on land, neutral persons and neutral property are not directly affected. When the conflict is upon the sea, the livelihood and ordinary

rights of neutrals are grievously impaired, and even the safety of innocent wayfarers upon the ocean highways may be gravely compromised. The rules under which this interference is justified are archaic and have become in modern times capable of an application, within the letter perhaps but wholly outside the spirit even of the old harsh law, which would amount to a new and intolerable tyranny. When war comes it may be too late. We should be wise to restrict in time what, if unrestricted, may make it very difficult to maintain neutrality at all.

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